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Presidential Determination No. 2022–11 of March 31, 2022

The President

Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as Amended

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 303 of the Defense Production Act of 1950, as amended (the “Act”) (50 U.S.C. 4533), it is hereby ordered:

Section 1. Policy. It is the policy of my Administration that ensuring a robust, resilient, sustainable, and environmentally responsible domestic industrial base to meet the requirements of the clean energy economy, such as the production of large-capacity batteries, is essential to our national security and the development and preservation of domestic critical infrastructure.

The United States depends on unreliable foreign sources for many of the strategic and critical materials necessary for the clean energy transition—such as lithium, nickel, cobalt, graphite, and manganese for large-capacity batteries. Demand for such materials is projected to increase exponentially as the world transitions to a clean energy economy.

To promote the national defense, the United States must secure a reliable and sustainable supply of such strategic and critical materials. The United States shall, to the extent consistent with the promotion of the national defense, secure the supply of such materials through environmentally responsible domestic mining and processing; recycling and reuse; and recovery from unconventional and secondary sources, such as mine waste.

These actions shall be conducted, to the extent consistent with the promotion of the national defense and applicable law, with strong environmental, sustainability, safety, labor, Tribal consultation, and impacted community engagement standards, to rebuild and maintain American expertise and productive capacity in these critical sectors.

Sec. 2. Determination. (a) I hereby determine, pursuant to section 303(a)(5) of the Act, that:

(1) sustainable and responsible domestic mining, beneficiation, and value-added processing of strategic and critical materials for the production of large-capacity batteries for the automotive, e-mobility, and stationary storage sectors are essential to the national defense;

(2) without Presidential action under section 303 of the Act, United States industry cannot reasonably be expected to provide the capability for these needed industrial resources, materials, or critical technology items in a timely manner; and

(3) purchases, purchase commitments, or other action pursuant to section 303 of the Act are the most cost-effective, expedient, and practical alternative method for meeting the need.

(b) Consistent with section 303(a)(1) of the Act, the Secretary of Defense shall create, maintain, protect, expand, or restore sustainable and responsible domestic production capabilities of such strategic and critical materials by supporting feasibility studies for mature mining, beneficiation, and value-added processing projects; by-product and co-product production at existing

mining, mine waste reclamation, and other industrial facilities; mining, beneficiation, and value-added processing modernization to increase productivity, environmental sustainability, and workforce safety; and any other such activities authorized under section 303(a)(1) of the Act.

(c) In the execution of projects to create, maintain, protect, expand, or restore sustainable and responsible domestic production capabilities of such strategic and critical materials consistent with section 303(a)(1) of the Act, the Secretary of Defense shall consult with the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Energy, and the heads of other executive departments and agencies (agencies) as appropriate.

(d) Further, pursuant to section 303(a)(7)(B) of the Act, I find that action to expand the domestic production capabilities for such strategic and critical materials is necessary to avert an industrial resource or critical technology item shortfall that would severely impair the national defense capability. Therefore, I waive the requirements of section 303(a)(1)–(a)(6) of the Act for the purpose of expanding the sustainable and responsible domestic mining, beneficiation, and value-added processing of strategic and critical materials necessary for the production of large-capacity batteries for the automotive, e-mobility, and stationary storage sectors.

Sec. 3. *Annual Report to the President and the Congress by the Secretary of Defense.* (a) The Secretary of Defense, in consultation with the heads of other agencies as appropriate, shall conduct a survey of the domestic industrial base for the mining, beneficiation, and value-added processing of strategic and critical materials for the production of large-capacity batteries for the automotive, e-mobility, and stationary storage sectors. Such survey shall assess whether conditions continue to warrant the use of the authority under section 303 of the Act.

(b) Consistent with the designation under section 309 of Executive Order 13603 of March 16, 2012 (National Defense Resources Preparedness), the Secretary of Defense shall include the survey stated in section 3(a) of this determination in the annual report to the Congress required by section 304(f) of the Act, and also shall submit such report to the President.

Sec. 4. *Limitations.* Nothing in this determination shall be construed to waive or supersede the requirement for mines or other industrial facilities to comply with all Federal and State permitting requirements and environmental health and safety laws.

Sec. 5. *General Provisions.* (a) Nothing in this determination shall be construed to impair or otherwise affect:

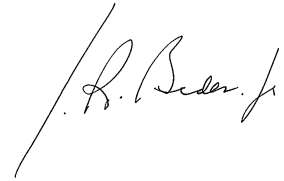
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This determination shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This determination is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are authorized and directed to publish this determination in the *Federal Register*.

A handwritten signature in black ink, appearing to read "R. B. Biden, Jr.", with a long, sweeping underline that extends to the left.

THE WHITE HOUSE,
Washington, March 31, 2022

[FR Doc. 2022-07421
Filed 4-5-22; 8:45 am]
Billing code 5001-06-P

Presidential Documents

Proclamation 10363 of April 1, 2022

National Public Health Week, 2022

By the President of the United States of America

A Proclamation

Each year, National Public Health Week provides a chance for all of us to come together to restore and strengthen the public health of our Nation. As we have seen so starkly over the past 2 years, public health is essential to every part of our National life—not only to the safety and well-being of our families and communities but also to our prosperity. This week, we celebrate the progress we have made to revitalize our public health, recommit ourselves to the work that still remains, and recognize all of the remarkable health care workers and public health professionals whose extraordinary sacrifice and courage on the front lines have carried our Nation through one of the most difficult periods in our history.

Thanks to our brave and dedicated public health and health care workforce, the resilience of the American people, and our comprehensive strategy to tackle COVID-19, our Nation is far better positioned today than we were a year ago. Vaccines and boosters have been proven to offer the highest level of protection—and today, more than 250 million Americans have stepped up to protect themselves and their communities by getting at least one shot, saving more than a million American lives. We are ready with millions of antiviral treatments that reduce your chance of ending up in the hospital by 90 percent. We are continuing to vaccinate the world, having sent over half a billion vaccine doses to 114 countries with more to come.

My Administration has made hundreds of millions of tests available for Americans to order directly to their homes for free. We have successfully reopened schools and businesses across the country, most Americans can now go safely mask-free, and together we are moving forward safely back to more normal routines. We have positioned ourselves well to detect and prepare for new variants and have more tools to protect people than ever before—but making sure these tools are readily available requires additional funding from the Congress. We urgently need the Congress to provide the funding we have requested to maintain our preparedness against COVID-19 and ensure the American people continue to have access to treatments, vaccines, and tests. The consequences of inaction are severe and immediate, and they will only get more significant over time.

While COVID-19 remains a top public health priority, we are committed to a full range of efforts to improve the Nation's general health, safety, and resilience. Last year, through the American Rescue Plan and other actions, we expanded access to—and lowered the cost of—quality health care for millions of Americans. In addition, we made new investments in mental health services; innovative health care technologies; our public health and health care workforce; and maternal, infant, and early childhood programs. Through the Bipartisan Infrastructure Law, we are also helping to address long-standing health inequities that have burdened communities of color and low-income neighborhoods for far too long. Because of this law, we are beginning to replace poisonous lead pipes so that every child, in every home and school in America, finally has clean water to drink. By making landmark investments in public transit and delivering high-

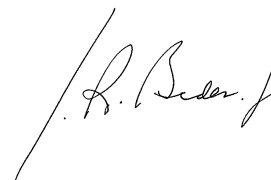
speed internet to every single community in the country, we are also making health care and telehealth services more accessible to each and every family.

Of course, there is much more that we need to do to improve our public health and build a better America. As we continue our fight to defeat the pandemic, we must also continue to expand health coverage and lower the cost of health care for every family—including the cost of prescription drugs like insulin. We must make transformational investments in our climate resilience and continue to address dangerous environmental injustices that threaten public health and have hit communities of color the hardest. We must take commonsense steps to address the public health epidemic of gun violence, which disproportionately impacts Black Americans. We must come together to address the toll that the mental health epidemic takes on America's children, deliver the physical and mental health care that our veterans and service members deserve, and make landmark investments to spark breakthroughs in our fight against cancer, Alzheimer's, diabetes, and other diseases.

During National Public Health Week, we recommit ourselves to reaching these goals—to improve our public health and, in so doing, improve our safety and security, our economic strength, the equity and fairness of our Nation, and our quality of life. Together, we share our appreciation to all those who safeguard the Nation's public health through acts of service and those who seek to strengthen communities by fostering equitable opportunities for all. My Administration encourages all Americans to do their part for public health—especially by getting vaccinated and receiving a booster shot, if eligible. It takes all of us to preserve the health of our Nation, and together we are poised to make tremendous progress to build a better, stronger, and healthier America.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 4 through April 10, 2022, as National Public Health Week. I call on all citizens, government agencies, private businesses, non-profit organizations, and other groups to take action to improve the health of our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of April, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.

A handwritten signature in black ink, appearing to read "Joe Biden", written in a cursive style.

Presidential Documents

Proclamation 10364 of April 1, 2022

World Autism Awareness Day, 2022

By the President of the United States of America

A Proclamation

On World Autism Awareness Day, we reaffirm our commitment to ensuring that the more than 5 million Americans who live with autism are able to make the most of their talents and participate fully in our society, and we celebrate the contributions autistic Americans have made to our families, our communities, our Nation, and the world.

We have made significant progress in improving access to opportunity for people with developmental disabilities in recent years. However, many autistic individuals still experience gaps in employment and income. The COVID-19 pandemic has compounded these inequities, creating unique challenges and strains for people with autism and their families.

That is why my Administration is committed to addressing the systemic barriers people with autism face in their daily lives. The pandemic upended school routines for children and students living with disabilities. That is why the Department of Education is working tirelessly to accelerate pandemic recovery for special education programs. In addition, the Department of Health and Human Services and the Department of Housing and Urban Development are committed to ensuring individuals with disabilities have access to affordable housing as we come through this pandemic.

In order to improve quality of life for people with autism and their families in every community, my Administration is committed to funding cutting-edge research to help us better understand, diagnose, and treat autism, including funding research at the National Institutes of Health and the Centers for Disease Control and Prevention that seeks to better understand the underlying mechanisms of autism from childhood through early adulthood, improve methods of early identification and diagnosis, and develop innovations in the delivery of interventions and services.

My Administration remains committed to reducing barriers in access to early diagnoses, interventions, and services for people with autism—regardless of race, gender, ethnicity, culture, or geography—and to incorporating the lived experiences of individuals with autism into their research. Last June, when I signed the Executive Order on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce, I promised to cultivate a Federal workforce that draws from the full diversity of the Nation. One of the ways we are delivering on that promise is through a partnership between the Department of Labor and the Administration for Community Living, which is expanding access to competitive, integrated employment opportunities for people with disabilities, including autism.

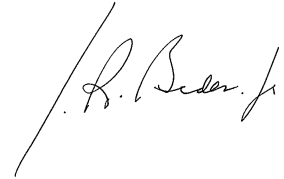
In addition, my Administration will continue to build on the work done by the Interagency Autism Coordinating Committee, the National Autism Coordinator, and others to make certain that autistic Americans have access to the care, services, and support they need, so they can pursue their educational, career, and life interests without discrimination.

Today and every day, we honor autistic people and celebrate the meaningful and measureless ways they contribute to our Nation. We applaud the millions of educators, advocates, family members, caregivers, and others who support

them. As we continue to build a better America, we reaffirm our promise to provide Americans with autism the support they need to live independently, fully participate in their communities, and lead fulfilling lives of dignity and respect.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 2, 2022, as World Autism Awareness Day. I call upon all Americans to learn more about autism to improve early diagnosis, to learn more about the experiences of autistic people from autistic people, and to build more welcoming and inclusive communities to support people with autism.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of April, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



Rules and Regulations

Federal Register

Vol. 87, No. 66

Wednesday, April 6, 2022

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1416

[Docket ID: CCC–2022–0001]

RIN 0560–A163

Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish Program (ELAP) Programs

AGENCY: Commodity Credit Corporation (CCC) and Farm Service Agency (FSA), USDA.

ACTION: Final rule.

SUMMARY: This rule makes changes to the Emergency Assistance for Livestock, Honey Bees, and Farm-raised Fish Program (ELAP) to assist producers with the cost of transporting feed to livestock intended for grazing and the cost of transporting livestock intended for grazing to feed. This rule amends the definition of “eligible drought” to cover situations in which any area of a county has been rated by the U.S. Drought Monitor as having a D2 (severe drought) intensity for at least 8 consecutive weeks, which will expand the availability of drought assistance for water transportation and honey bee feed losses. It also removes the restriction on providing assistance for transportation of water to livestock located on land enrolled in the Conservation Reserve Program (CRP).

DATES: *Effective* April 6, 2022.

FOR FURTHER INFORMATION CONTACT: Tona Huggins; telephone: (202) 720–6825; email: Tona.Huggins@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

ELAP provides financial assistance to eligible producers of livestock, honey bees, and farm-raised fish for losses due

to disease, certain adverse weather events, and loss conditions, including blizzards and wildfires, as determined by the Secretary. ELAP provides assistance for losses that are not covered by the Livestock Forage Disaster Program (LFP) and the Livestock Indemnity Program (LIP). This rule makes discretionary changes to ELAP to better assist producers who face severe drought conditions.

FSA, which administers ELAP on behalf of CCC, is making discretionary changes to the ELAP regulations in 7 CFR part 1416, subpart B; specifically, in §§ 1416.103, 1416.106, and 1416.110 to assist producers with the cost of transporting feed to livestock intended for grazing and the cost of transporting livestock to feed, when the livestock are intended for grazing. Livestock producers in areas suffering from eligible adverse weather, an eligible loss condition, or eligible drought, who often produce feed on the farm, may find it hard to acquire forage locally. As a result, those producers may be forced to transport feed from unaffected areas or to transport livestock to feed in unaffected areas, which results in additional hauling costs.

To be eligible for ELAP assistance for feed or livestock transportation costs, producers must have incurred costs for additional mileage above normal on or after January 1, 2021, for transporting feed to livestock or livestock to feed. ELAP assistance for the transportation of livestock is only available for the transportation of livestock to feed or feed to livestock, not the return of the animals to their originating location or unloaded truck miles following the delivery of feed. Payments will be calculated by multiplying a national payment rate, as determined in § 1416.109 of the existing ELAP regulations, by the national average price per mile to transport a truckload of eligible livestock or livestock feed, multiplied by the actual number of additional miles the feed or livestock was transported by the producer in excess of 25 miles per truckload of livestock or livestock feed and for no more than 1,000 miles per truckload of livestock or feed during the program year. The payment calculation is based on a national average price per mile, determined by the Deputy Administrator of Farm Programs for FSA (Deputy Administrator) using a

national cost formula developed by FSA. The national average price per mile for each program year will be based on an annual update to the national cost formula which considers the cost of hauling feed or animals above normal mileage, not to include the first 25 miles. The national average price per mile considers the average cost for hauling a truckload of forage or livestock from sources 200 miles away. This national average price per mile may differ from year to year due to changes in fuel costs, truck availability, and driver availability. The Deputy Administrator may determine a different price per mile for a particular state, if the Deputy Administrator determines that a different price is necessary due to differences in state hauling costs compared to national average costs. The original physical location of the livestock will determine the applicable state for payment purposes. Differences in state hauling costs necessitating a different price for a state are expected to be rare.

Payments for losses resulting from costs associated with treating livestock feed transported above normal mileage to prevent the spread of invasive pests will be calculated by multiplying a national payment rate, as determined in § 1416.109 of the existing ELAP regulations, by the producer’s actual cost for controlling invasive pests in livestock feed transported above normal.

This rule also amends the definition of “eligible drought” for ELAP in § 1416.102 to specify how it applies to losses due to the cost to transport livestock and feed as described above, and to cover situations where any area of a county has been rated by the U.S. Drought Monitor as having either a:

- D2 (severe drought) intensity for at least 8 consecutive weeks for the specific type of eligible grazing land or pastureland for the county; or
- D3 (extreme drought) or D4 (exceptional drought) intensity for the specific type of eligible grazing land or pastureland for the county, as determined by the Secretary.

Previously, a drought rating of D3 was required to qualify as “eligible drought” for water transportation and honey bee feed loss eligibility. This change will expand the availability of drought assistance for water transportation and honey bee feed loss and is consistent with the drought rating that is

applicable to LFP as specified in § 1416.205 and Secretarial disaster area designations as specified in § 759.5(a). This rule also removes the restriction in § 1416.103(d)(5) on providing assistance for transportation of water to livestock located on land enrolled in CRP.

This rule also makes minor technical corrections to §§ 1416.106(c)(3), 1416.110(a)(4), 1416.110(b).

Notice and Comment, Paperwork Reduction Act, Congressional Review Act, and Effective Date

The Administrative Procedure Act (APA, 5 U.S.C. 553(a)(2)) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to benefits or contracts. This rule governs ELAP, which provides benefit payments and therefore falls within that exemption.

Further, as specified in 7 U.S.C. 9091, the regulations to implement ELAP are:

- Exempt from the notice and comment provisions of 5 U.S.C. 553; and

- Exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35).

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The requirements for the regulatory flexibility analysis in 5 U.S.C. 603 and 604 are specifically tied to the requirement for a proposed rule by section 553 or any other law; in addition, the definition of rule in 5 U.S.C. 601 is tied to the publication of a proposed rule.

This is not a major rule under the Congressional Review Act (CRA), as defined by 5 U.S.C. 804(2). Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review.

Therefore, this rule is effective upon publication in the **Federal Register**.

Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. The assessment should include potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasized the

importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and therefore, OMB has not reviewed this rule and an analysis of costs and benefits to loans is not required under either Executive Order 12866 or 13563.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and because USDA will be making the payments to producers, the USDA regulation for compliance with NEPA (7 CFR part 1b).

This rule implements discretionary amendments for ELAP. The discretionary aspects are to improve administration of the programs and clarify existing program requirements. FSA is providing the disaster assistance under ELAP to eligible producers. The discretionary provisions would not alter any environmental impacts resulting from implementing the mandatory changes to those programs. Accordingly, these discretionary aspects are covered by the following Categorical Exclusion in 7 CFR 799.31(b)(6)(vi) safety net programs administered by FSA.

Through this review, FSA determined that the proposed discretionary changes in this rule fit within the categorical exclusions listed above. Categorical exclusions apply when no extraordinary circumstances (§ 799.33) exist. This rule presents only discretionary amendments that will not have an impact on the human environments, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this rule. This rule serves as documentation of the programmatic environmental compliance decision for this federal action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Payments for transportation of feed and livestock will be made retroactively

starting on January 1, 2021, as discussed above. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

USDA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that required Tribal consultation under Executive Order 13175 at this time. If a Tribe requests consultation, the USDA Office of Tribal Relations (OTR) will ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by law. Outside of Tribal consultation, USDA is working with Tribes to provide information about pandemic assistance, agricultural disaster assistance, and other issues.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies are 10.091—Emergency Assistance for Livestock, Honey Bees, and Farm-raised Fish Program.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 or (844) 433-2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410 or email: OAC@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

List of Subjects in 7 CFR Part 1416

Administrative practice and procedure, Agriculture, Bees, Dairy products, Disaster assistance, Fruits, Livestock, Nursery stock, Reporting and recordkeeping requirements, Seafood.

For the reasons discussed above, this final rule amends 7 CFR part 1416 as follows:

PART 1416—EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS

■ 1. The authority citation for part 1416 continues to read as follows:

Authority: Title I, Pub. L. 113–79, 128 Stat. 649; Title I, Pub. L. 115–123; Title VII, Pub. L. 115–141; and Title I, Pub. L. 116–20.

Subpart B—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program

■ 2. In § 1416.102, revise the definition of “eligible drought” to read as follows.

§ 1416.102 Definitions.

* * * * *

Eligible drought means that any area of the county has been rated by the U.S. Drought Monitor as having D2 (severe drought) intensity for at least 8 consecutive weeks for the specific type of eligible grazing land or pastureland for the county, or D3 (extreme drought) or D4 (exceptional drought) intensity for the specific type of eligible grazing land or pastureland for the county, as determined by the Secretary:

(1) At any time during the program year, for additional honey bee feed loss;

(2) That directly impacts water availability at any time during the normal grazing period (for example, snow pack that feeds streams and springs), as determined by the Deputy Administrator or designee, for losses resulting from transporting water to livestock; or

(3) At any time during the normal grazing period, for losses resulting from the additional cost incurred to transport livestock feed or eligible livestock to feed, for additional mileage above normal.

* * * * *

■ 3. In § 1416.103, revise paragraph (d)(5) introductory text and add paragraph (d)(6) to read as follows.

§ 1416.103 Eligible losses, adverse weather, and other loss conditions.

* * * * *

(d) * * *

(5) A loss resulting from the additional cost of transporting water to eligible livestock as specified in § 1416.104(a) due to eligible adverse weather, eligible loss condition, or eligible drought, as determined by the Deputy Administrator, including, but not limited to, costs associated with water transport equipment rental fees, labor, and contracted water

transportation fees. The cost of the water is not eligible for payment. To be eligible for additional cost of transporting water to eligible livestock, the livestock must be livestock that would normally have been grazing on eligible grazing lands that meet all of the following:

* * * * *

(6) A loss resulting from the additional cost incurred on or after January 1, 2021, to transport, eligible livestock to feed or livestock feed to eligible livestock for additional mileage above normal, due to eligible adverse weather, an eligible loss condition, or eligible drought, as determined by the Deputy Administrator, including costs associated with treating livestock feed to prevent the spread of invasive pests. The cost of the feed is not eligible for payment. Negligence, mismanagement, or wrongdoing by the producer is not considered an eligible loss condition for livestock or feed transportation costs. To be eligible for a loss under this paragraph, the livestock must be livestock that would normally have been on eligible grazing lands physically located in the county where the eligible adverse weather, eligible loss condition, or eligible drought, as determined by the Deputy Administrator, occurred.

* * * * *

■ 4. In § 1416.104, revise paragraph (a) introductory text, paragraph (b) introductory text, and paragraph (c) introductory text to read as follows.

§ 1416.104 Eligible livestock, honeybees, and farm-raised fish.

(a) To be considered eligible livestock for livestock grazing and feed; losses resulting from transporting water, feed, and livestock; and gathering livestock to treat for cattle tick fever; livestock must meet all the following conditions:

* * * * *

(b) The eligible livestock types for grazing and feed losses; losses resulting from transporting water, feed, and livestock; and gathering livestock to treat for cattle tick fever are:

* * * * *

(c) Ineligible livestock for grazing and feed losses and losses resulting from transporting water, feed, and livestock include, but are not limited to:

* * * * *

■ 5. In § 1416.105, revise paragraph (a) introductory text to read as follows.

§ 1416.105 Eligible producers, owners, and contract growers.

(a) To be considered an eligible livestock producer and receive payments for feed losses; losses

resulting from transporting water, feed, or livestock; and gathering livestock to treat for cattle tick fever; the participant must have:

* * * * *

■ 6. In § 1416.106:

■ a. Revise paragraph (a)(2)(i);

■ b. In paragraph (c)(3), remove the words “A loss resulting from the additional cost incurred for” and add the words “Additional cost of” in their place; and

■ c. Add paragraph (c)(5).

The revision and addition read as follows.

§ 1416.106 Notice of loss and application process.

(a) * * *

(2) * * *

(i) For livestock feed and grazing losses; losses resulting from transporting water, feed, and livestock; and gathering livestock to treat for cattle tick fever; a completed Emergency Loss Assistance for Livestock Application;

* * * * *

(c) * * *

(5) Additional cost incurred to transport eligible livestock to feed or livestock feed to eligible livestock for additional mileage above normal, due to an eligible adverse weather, an eligible loss condition, or eligible drought, as determined by the Deputy Administrator, including costs associated with treating livestock feed to prevent the spread of invasive pests. Verifiable or reliable records include, but are not limited to, commercial receipts, contemporaneous records, and invoices. Records must clearly indicate the dates on which livestock or feed was transported and the total mileage transported.

* * * * *

■ 7. In § 1416.110:

■ a. In paragraph (a)(4), remove the semicolon at the end of the paragraph and add a period in its place;

■ b. In paragraph (b) introductory text, remove the word “more” and add “more than” in its place, and remove the word “calculated” and add “will be calculated” in its place;

■ c. Redesignate paragraph (n) as paragraph (q); and

■ d. Add new paragraph (n) and paragraphs (o) and (p).

The additions read as follows.

§ 1416.110 Livestock payment calculations.

* * * * *

(n) Payments for losses resulting from the additional cost of transporting eligible livestock to feed or livestock feed to eligible livestock, for additional

mileage above normal, in excess of 25 miles per truckload and for no more than 1,000 miles per truckload of livestock or livestock feed during the program year, as specified in § 1416.103(d)(6) will be calculated based on a national payment rate, as determined in § 1416.109, multiplied by:

(1) The national average price per mile to transport a truckload of livestock or livestock feed; and

(2) The actual number of additional miles above normal to transport livestock or livestock feed by an eligible producer, in excess of 25 miles per truckload of livestock or feed and for no more than 1,000 miles per truckload of livestock or feed during the program year.

(o) The national average price per mile to transport a truckload of livestock or feed to be used in the calculation for paragraph (n)(1) of this section is determined by the Deputy Administrator for each program year using a national cost formula developed by FSA based on the cost of hauling feed or livestock above normal mileage, not to include the first 25 miles. The national average price per mile considers the average cost for hauling a truckload of forage or livestock from sources 200 miles away. The Deputy Administrator may determine a different price per mile for a particular state, if the Deputy Administrator determines that a different price is necessary due to differences in state hauling costs compared to national average costs. The original physical location of the livestock will determine the applicable state for payment purposes.

(p) Payments for losses resulting from costs associated with treating livestock feed transported above normal to prevent the spread of invasive pests, as specified in § 1416.103(d)(6), will be calculated based on a national payment rate, as determined in § 1416.109, multiplied by the producer’s actual cost for controlling invasive pests in livestock feed transported above normal.

* * * * *

Robert Ibarra,

Executive Vice President, Commodity Credit Corporation.

Marcus Graham,

Acting Administrator, Farm Service Agency.

[FR Doc. 2022-07209 Filed 4-5-22; 8:45 am]

BILLING CODE 3410-05-P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1209, 1217, and 1250

RIN 2590-AB20

Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustment

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule; correction.

SUMMARY: The Federal Housing Finance Agency (FHFA) is correcting a final rule that was published in the Federal Register on January 12, 2022, amending its Rules of Practice and Procedure and other agency regulations to adjust each civil money penalty within its jurisdiction to account for inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. In that publication, the Regulatory Identification Number (RIN) for the FHFA was incorrect. This document corrects that error.

DATES: Effective April 6, 2022, and applicable beginning January 15, 2022.

FOR FURTHER INFORMATION CONTACT:

Frank R. Wright, Assistant General Counsel, at (202) 649-3087, Frank.Wright@fhfa.gov (not a toll-free number); Federal Housing Finance Agency, 400 7th Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION: In FR Doc. 2022-00361, “Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustment” that published in the Federal Register on Wednesday, January 12, 2022 at 87 FR 1659, in the first column on page 1659, correct the RIN to read 2590-AB20.

Sandra L. Thompson,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2022-07176 Filed 4-5-22; 8:45 am]

BILLING CODE 8070-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 25**

[Docket No. FAA-2022-0276; Special Conditions No. 25-815-SC]

**Special Conditions: Peregrine;
Installed Rechargeable Lithium
Batteries**

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for a supplemental type certificate to install rechargeable lithium batteries in an electronic standby instrument on certain transport category airplanes. These airplanes, as modified by Peregrine, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is the installation of an electronic standby instrument supply that contains rechargeable lithium batteries. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Peregrine on April 6, 2022. Send comments on or before May 23, 2022.

ADDRESSES: Send comments identified by Docket No. FAA-2022-0276 using any of the following methods:

- *Federal eRegulations Portal:* Go to <http://www.regulations.gov/> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

Privacy: Except for Confidential Business Information (CBI) as described in the following paragraph, and other

information as described in 14 CFR 11.35, the FAA will post all comments received without change to <https://www.regulations.gov/>, including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this proposal.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this Notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this Notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of this Notice. Submissions containing CBI should be sent to Nazih Khaouly, Aircraft Systems, AIR-623, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206-231-3160; email nazih.khaouly@faa.gov. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for this rulemaking.

Docket: Background documents or comments received may be read at <https://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Aircraft Systems, AIR-623, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206-231-3160; email nazih.khaouly@faa.gov.

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA

finds that, pursuant to § 11.38(b), new comments are unlikely, and public notice and comment prior to this publication are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On October 7, 2021, Peregrine applied for a supplemental type certificate (STC) to install rechargeable lithium batteries in an electronic standby instrument. Peregrine wants to apply this STC to multiple transport category airplanes and may periodically amend this STC to expand its applicability to include additional transport category airplane makes and models.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR), § 21.101, Peregrine must show that airplanes, for which they make application to modify by STC no. ST01985WI, as changed, continue to meet the applicable provisions of the regulations listed in each airplane's respective type certificate or the applicable regulations in effect on the date of application for the change except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the airplane model for which they are issued. Should the applicant apply for an STC to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special

conditions, the airplanes modified by STC no. ST01985WI must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The airplanes with STC no. ST01985WI will incorporate the following novel or unusual design feature:

The installation of an electronic standby instrument containing a rechargeable lithium ion battery.

Discussion

Rechargeable lithium batteries are considered to be a novel or unusual design feature in transport category airplanes, with respect to the requirements in § 25.1353. This type of battery has certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on transport category airplanes. These batteries introduce higher energy levels into airplane systems through new chemical compositions in various battery-cell sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

Special Condition 1 requires that each individual cell within a battery be designed to maintain safe temperatures and pressures. Special Condition 2 addresses these same issues but for the entire battery. Special Condition 2 requires that the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrolled increases in temperature or pressure from one cell to adjacent cells.

Special Conditions 1 and 2 are intended to ensure that the cells and battery are designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Special Conditions 3, 7, and 8 are self-explanatory. Special Condition 4 clarifies that the flammable-fluid fire-protection requirements of § 25.863 apply to rechargeable lithium battery installations. Section 25.863 is

applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Rechargeable lithium batteries contain electrolyte that is a flammable fluid.

Special Condition 5 requires each rechargeable lithium battery installation to not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition. Special Condition 6 requires each rechargeable lithium battery installation to have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells. The means of meeting special conditions 5 and 6 may be the same, but they are independent requirements addressing different hazards. Special Condition 5 addresses corrosive fluids and gases, whereas special condition 6 addresses heat.

Special Condition 9 requires rechargeable lithium batteries to have “automatic” means, for charge rate and disconnect, due to the fast-acting nature of lithium battery chemical reactions. Manual intervention would not be timely or effective in mitigating the hazards associated with these batteries.

These special conditions apply to all rechargeable lithium battery installations in lieu of § 25.1353(b)(1) through (4) at Amendment 25–123 or § 25.1353(c)(1) through (4) at earlier amendments. Those regulations remain in effect for other battery installations.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the airplane models listed on the approved model list (AML) of STC no. ST01985WI, which is available at rgl.faa.gov. All models listed in the AML must be evaluated and determined to comply with these special conditions. Additionally each new model added to the AML subsequently must also be evaluated and determined to comply with these special conditions. Should Peregrine apply at a later date for a change to STC no. ST01985WI to include any other model on the AML to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well. Should Peregrine apply at a later date for another STC to modify any other

model included on the type certificates of the models on the STC no. ST01985WI AML to incorporate the same novel or unusual design feature, these special conditions would also apply to that model as well. These special conditions are not applicable to those models in which applicable special conditions for rechargeable lithium batteries have already been issued against the type certificate for that specific model.

Conclusion

This action only affects the installation of an electronic standby instrument that contains rechargeable lithium batteries on the airplane models listed on the AML of STC no. ST01985WI. It is not a rule of general applicability and affects only the applicant who will apply to the FAA for approval of these features on the airplanes.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for airplane models listed on the approved model list of supplemental type certificate no. ST01985WI, as modified by Peregrine.

In lieu of § 25.1353(b)(1) through (4) at amendment 25–123, or § 25.1353(c)(1) through (4) at earlier amendments, each rechargeable lithium battery installation must:

1. Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.
2. Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure, and automatically control the charge rate of each cell to protect against adverse operating conditions, such as cell imbalance, back charging, overcharging and overheating.
3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure that may accumulate in hazardous quantities within the airplane.
4. Meet the requirements of § 25.863.
5. Not damage surrounding structure or adjacent systems, equipment, or

electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more-severe failure condition.

6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.

7. Have a failure sensing and warning system to alert the flight crew if its failure affects safe operation of the airplane.

8. Have a monitoring and warning feature that alerts the flightcrew when its charge state falls below acceptable levels if its function is required for safe operation of the airplane.

9. Have a means to automatically disconnect from its charging source in the event of an over-temperature condition, cell failure or battery failure.

Note: A battery system consists of the battery, battery charger, and any protective monitoring and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of these special conditions, a battery and the battery system is referred to as a battery.

Issued in Kansas City, Missouri, on April 1, 2022.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022-07254 Filed 4-5-22; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA-2022-0277; Special Conditions No. 25-814-SC]

Special Conditions: Peregrine, Textron Aviation Model 400A Airplane; Rechargeable Lithium Batteries

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Textron Aviation (Textron) Model 400A airplane. This airplane, as modified by Peregrine, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is a main ship rechargeable lithium battery. The applicable airworthiness regulations do not contain adequate or

appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Peregrine on April 6, 2022. Send comments on or before May 23, 2022.

ADDRESSES: Send comments identified by Docket No. FAA-2022-0277 using any of the following methods:

- **Federal eRegulations Portal:** Go to <https://www.regulations.gov/> and follow the online instructions for sending your comments electronically.

- **Mail:** Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** Fax comments to Docket Operations at 202-493-2251.

Privacy: Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in title 14, Code of Federal Regulations (14 CFR) 11.35, the FAA will post all comments received without change to <https://www.regulations.gov/>, including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about these special conditions.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of these special conditions. Submissions containing CBI

should be sent to Nazih Khaouly, Aircraft Systems, AIR-623, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206-231-3160; email nazih.khaouly@faa.gov. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

Docket: Background documents or comments received may be read at <https://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Aircraft Systems, AIR-623, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206-231-3160; email nazih.khaouly@faa.gov.

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA finds, pursuant to § 11.38(b), that new comments are unlikely, and notice and comment prior to this publication are unnecessary.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On November 30, 2021, Peregrine applied for a supplemental type certificate for the installation of a True Blue Power TB40 main ship rechargeable lithium battery in the Model 400A airplane. The Textron Model 400A airplane is a twin-engine transport category business jet, with a maximum passenger capacity of 11, and

has a maximum takeoff weight of 16,300 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Peregrine must show that the Model 400A airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. A16SW or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (e.g., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Peregrine Model 400A airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Textron Model 400A airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Textron Model 400A airplane will incorporate the following novel or unusual design features:

Installation of True Blue Power TB40 main ship rechargeable lithium battery.

Discussion

Rechargeable lithium batteries are considered to be a novel or unusual design feature in transport category airplanes, with respect to the requirements in § 25.1353. This type of battery has certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on transport category airplanes. These batteries introduce higher energy levels into airplane systems through new chemical compositions in various battery-cell

sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

Special Condition 1 requires that each individual cell within a battery be designed to maintain safe temperatures and pressures. Special Condition 2 addresses these same issues but for the entire battery. Special Condition 2 requires that the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrolled increases in temperature or pressure from one cell to adjacent cells.

Special Conditions 1 and 2 are intended to ensure that the cells and battery are designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Special Conditions 3, 7, and 8 are self-explanatory. Special Condition 4 clarifies that the flammable-fluid fire-protection requirements of § 25.863 apply to rechargeable lithium battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Rechargeable lithium batteries contain electrolyte that is a flammable fluid.

Special Condition 5 requires each rechargeable lithium battery installation to not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition. Special Condition 6 requires each rechargeable lithium battery installation to have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells. The means of meeting special conditions 5 and 6 may be the same, but they are independent requirements addressing different hazards. Special Condition 5 addresses corrosive fluids and gases, whereas special condition 6 addresses heat.

Special Condition 9 requires rechargeable lithium batteries to have “automatic” means, for charge rate and disconnect, due to the fast-acting nature of lithium battery chemical reactions. Manual intervention would not be timely or effective in mitigating the hazards associated with these batteries.

These special conditions apply to all rechargeable lithium battery installations in lieu of § 25.1353(b)(1)

through (4) at Amendment 25–123 or § 25.1353(c)(1) through (4) at earlier amendments. Those regulations remain in effect for other battery installations.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Textron Model 400A airplane. Should Peregrine apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A16SW to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of this feature on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Textron Aviation Model 400A airplanes, as modified by Peregrine.

In lieu of § 25.1353(b)(1) through (4) at amendment 25–123, or § 25.1353(c)(1) through (4) at earlier amendments, each rechargeable lithium battery installation must:

1. Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.
2. Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure, and automatically control the charge rate of each cell to protect against adverse operating conditions, such as cell imbalance, back charging, overcharging and overheating.
3. Not emit explosive or toxic gases, either in normal operation or as a result

of its failure that may accumulate in hazardous quantities within the airplane.

4. Meet the requirements of § 25.863.

5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more-severe failure condition.

6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.

7. Have a failure sensing and warning system to alert the flight crew if its failure affects safe operation of the airplane.

8. Have a monitoring and warning feature that alerts the flightcrew when its charge state falls below acceptable levels if its function is required for safe operation of the airplane.

9. Have a means to automatically disconnect from its charging source in the event of an over-temperature condition, cell failure or battery failure.

Note: A battery system consists of the battery, battery charger, and any protective monitoring and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of these special conditions, a battery and the battery system is referred to as a battery.

Issued in Kansas City, Missouri, on April 1, 2022.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022-07255 Filed 4-5-22; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2022-0018; Project Identifier MCAI-2021-00853-R; Amendment 39-21997; AD 2022-07-09]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Model AS33L2 and EC225LP helicopters. This AD was prompted by a discrepancy in the

rotorcraft flight manual (RFM) where the rotorcraft stay-up flying capabilities for Category B operation were provided through performance data only, not as airworthiness limitations that are dependent upon on the number of passengers on board. This AD requires revising the existing RFM for your helicopter, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products. **DATES:** This AD is effective May 11, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 11, 2022.

ADDRESSES: For EASA material incorporated by reference (IBR) in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet www.easa.europa.eu. You may find the EASA material on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0018.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0018; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228-7330; email andrea.jimenez@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European

Union, has issued EASA AD 2021-0174, dated July 21, 2021 (EASA AD 2021-0174), to correct an unsafe condition for Airbus Helicopters, formerly Eurocopter, Eurocopter France, and Aerospatiale, Model AS 332 L2 and EC 225 LP helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters Model AS332L2 and EC225LP helicopters. The NPRM published in the **Federal Register** on January 31, 2022 (87 FR 4820). The NPRM was prompted by a discrepancy in the RFM where the rotorcraft stay-up flying capabilities for Category B operation were provided through performance data only, not as airworthiness limitations that are dependent upon on the number of passengers on board. The NPRM proposed to require revising the existing RFM for your helicopter, as specified in EASA AD 2021-0174.

The FAA is issuing this AD to address this discrepancy in the RFM, which, if not addressed, could lead to incorrect determination of the stay-up flying capabilities of the helicopter, resulting in reduced control of the helicopter. See EASA AD 2021-0174 for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 14 CFR Part 51

EASA AD 2021-0174 requires amending (revising) the Limitation Section of the applicable RFM by incorporating new weight limitations that are dependent upon the number of passengers on board.

This material is reasonably available because the interested parties have access to it through their normal course

of business or by the means identified in the **ADDRESSES** section.

Differences Between This AD and the EASA AD

EASA AD 2021-0174 requires operators to “inform all flight crew” of revisions to the RFM and, thereafter, to “operate the helicopter accordingly.” However, this AD does not specifically require those actions.

14 CFR 91.9 requires that no person may operate a civil aircraft without complying with the operating limitations specified in the RFM. Therefore, including a requirement in this AD to operate the helicopter according to the revised RFM would be redundant and unnecessary. Further, compliance with such a requirement in an AD would be impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the helicopter in such a manner would be unenforceable.

This AD allows the owner/operator (pilot) holding at least a private pilot certificate to revise the existing RFM for your helicopter and do the logbook entry, whereas EASA AD 2021-0174 does not specify this. This AD requires these actions to be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v), and the record to be maintained as required by 14 CFR 91.417 or 135.439.

Costs of Compliance

The FAA estimates that this AD affects 38 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Revising the existing RFM for your helicopter takes about 0.50 work-hour for an estimated cost of \$42.50 per helicopter and \$1,615 for the U.S. fleet.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds

necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2022-07-09 Airbus Helicopters:

Amendment 39-21997; Docket No. FAA-2022-0018; Project Identifier MCAI-2021-00853-R.

(a) Effective Date

This airworthiness directive (AD) is effective May 11, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model AS332L2 and EC225LP helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 7600, Engine Controls.

(e) Unsafe Condition

This AD was prompted by a discrepancy in the rotorcraft flight manual (RFM) where the rotorcraft stay-up flying capabilities for Category B operation were provided through performance data only, not as airworthiness limitations that are dependent upon the number of passengers on board. The FAA is issuing this AD to address this discrepancy in the RFM, which, if not addressed, could lead to incorrect determination of the stay-up flying capabilities of the helicopter, resulting in reduced control of the helicopter.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021-0174, dated July 21, 2021 (EASA AD 2021-0174).

(h) Exceptions to EASA AD 2021-0174

(1) Where EASA AD 2021-0174 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2021-0174 specifies to “inform all flight crew and, thereafter, operate the helicopter accordingly,” this AD does not require those actions.

(3) This AD does not mandate compliance with the “Remarks” section of EASA AD 2021-0174.

(4) Where paragraph (2) of EASA AD 2021-0174 specifies an acceptable compliance method, replace the text “which includes information of equal effect to that presented” with “which includes information identical to that presented.”

(5) The action required by paragraphs (1) and (2) of EASA AD 2021-0174 may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417 or 135.439.

(i) Special Flight Permit

Special flight permits may be permitted provided that there are no passengers on board.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228-7330; email andrea.jimenez@faa.gov.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2021-0174, dated July 21, 2021.

(ii) [Reserved]

(3) For EASA AD 2021-0174, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet www.easa.europa.eu. You may find the EASA material on the EASA website at <https://ad.easa.europa.eu>.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. This material may be found in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0018.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fr.inspection@nara.gov, or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on March 31, 2022.

Derek Morgan,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022-07174 Filed 4-5-22; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2022-0008; Project Identifier MCAI-2021-00882-R; Amendment 39-21985; AD 2022-06-19]

RIN 2120-AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Leonardo S.p.a. Model AW109SP helicopters. This AD was prompted by reports of corrosion inside the hoist support assembly (boom assembly) (affected part) that affects both the huck bolt heads (blind bolt fasteners) and the support surface. This AD requires repetitive inspections of the external and internal surfaces of each affected part for cracking and corrosion and, depending on the findings, accomplishment of corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 11, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 11, 2022.

ADDRESSES: For EASA material incorporated by reference (IBR) in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet www.easa.europa.eu. You may find the EASA material on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0008.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0008; or in person at Docket Operations between 9 a.m. and 5 p.m.,

Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228-7330; email andrea.jimenez@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021-0179, dated July 27, 2021 (EASA AD 2021-0179), to correct an unsafe condition for Leonardo S.p.a. Helicopters, formerly Finmeccanica S.p.A., AgustaWestland S.p.A., and Agusta S.p.A., Model AW109SP helicopters, all serial numbers.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Leonardo S.p.a. Model AW109SP helicopters. The NPRM published in the **Federal Register** on January 21, 2022 (87 FR 3241). The NPRM was prompted by reports of corrosion inside the hoist support assembly affecting both the huck bolt heads and the support surface. Investigation of the root cause for the corrosion is ongoing. The NPRM proposed to require repetitive inspections of the external and internal surfaces of each affected part for cracking and corrosion and, depending on the findings, accomplishment of corrective actions, as specified in EASA AD 2021-0179.

The FAA is issuing this AD to address corrosion on the hoist support assembly. This condition, if not addressed, could affect the structural integrity of the hoist support assembly, leading to in-flight detachment of the hoist support and consequent damage to the helicopter, and injury to hoisted persons. See EASA AD 2021-0179 for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0179 requires repetitive inspections of the external and internal surfaces of each affected part for cracking and corrosion and, depending on the findings, accomplishment of corrective actions. If

there is no evidence of corrosion on the interior surface of the boom torque tube or on the huck bolt heads, the corrective actions include spraying the interior surface with corrosion preventative compound around the huck bolt heads from the forward and aft ends of the boom torque tube, and installing new tube plugs on both ends of the boom torque tube. If there is superficial corrosion on the interior surface of the boom torque tube or on the huck bolt heads, the corrective actions include cleaning the corrosion, spraying the interior surface with corrosion preventative compound, and installing new tube plugs on both ends of the boom torque tube. If corrosion is found that is not superficial corrosion, the corrective action is repair or replacement of the boom torque tube.

If cracking is observed on the external surface of the hoist support assembly the corrective action is replacement of the hoist support assembly. If only

corrosion is found on the external surface of the hoist support assembly the corrective actions include cleaning the hoist support assembly.

EASA AD 2021–0179 also allows installing an affected part, provided certain instructions are followed.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Interim Action

The FAA considers this AD to be an interim action. If final action is later identified, the FAA might consider further rulemaking.

Costs of Compliance

The FAA estimates that this AD affects 40 helicopters of U.S. Registry. The FAA estimates the following costs to comply with this AD.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspecting	0.50 work-hour × \$85 per hour = \$42.50 per inspection cycle.	\$0	\$42.50 per inspection cycle.	\$1,700 per inspection cycle.
Installing new boom torque tube plugs	0.25 work-hour × \$85 per hour = \$21.25.	5,044	\$5,065.25	\$202,610.

The FAA estimates the following costs to do any necessary replacements

that are required based on the results of the inspection. The agency has no way

of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Cleaning boom torque tube interior or exterior	0.25 work-hour × \$85 per hour = \$21.25	\$0	\$21.25
Replacing boom torque tube	6 work-hours × \$85 per hour = \$510	39,500	40,010
Replacing hoist support assembly	6.50 work-hours × \$85 per hour = \$552.50	44,864	45,416.50

The FAA has received no definitive data on which to base the cost estimates for the repairs specified in this AD.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a

substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2022-06-19 Leonardo S.p.a.: Amendment 39-21985; Docket No. FAA-2022-0008; Project Identifier MCAI-2021-00882-R.

(a) Effective Date

This airworthiness directive (AD) is effective May 11, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Leonardo S.p.a. Model AW109SP helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2560, Emergency Equipment.

(e) Unsafe Condition

This AD was prompted by reports of corrosion inside the hoist support assembly (boom assembly) (affected part) that affects both the huck bolt heads (blind bolt fasteners) and the support surface. The FAA is issuing this AD to address corrosion on the hoist support assembly. This condition, if not addressed, could affect the structural integrity of the hoist support assembly, leading to in-flight detachment of the hoist support and consequent damage to the helicopter, and injury to hoisted persons.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021-0179, dated July 27, 2021 (EASA AD 2021-0179).

(h) Exceptions to EASA AD 2021-0179

(1) Where EASA AD 2021-0179 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2021-0179 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where the service information referenced in EASA AD 2021-0179 specifies discarding parts, this AD requires removing those parts from service.

(4) Where the service information referenced in EASA AD 2021-0179 specifies returning a part to the manufacturer, this AD requires removing that part from service.

(5) Where the service information referenced in EASA AD 2021-0179 specifies submitting photographs to the manufacturer, this AD does not require that action.

(6) Where the service information referenced in EASA AD 2021-0179 specifies attaching a label to the hoist support assembly, this AD does not require that action.

(7) Where paragraph (2) of EASA AD 2021-0179 specifies contacting Leonardo S.p.a. for corrective action instructions, this AD requires replacing or repairing before further flight using a method approved by the Manager, General Aviation and Rotorcraft Section, International Validation Branch, FAA; or EASA; or Leonardo S.p.a.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(8) This AD does not mandate compliance with the "Remarks" section of EASA AD 2021-0179.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021-0179 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits may be permitted provided that there are no passengers on board.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Related Information

For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228-7330; email andrea.jimenez@faa.gov.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2021-0179, dated July 27, 2021.

(ii) [Reserved]

(3) For EASA AD 2021-0179, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet www.easa.europa.eu. You may find the EASA material on the EASA website at <https://ad.easa.europa.eu>.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. This material may be found in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0008.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fr.inspection@nara.gov, or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on March 10, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022-07263 Filed 4-5-22; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 97**

[Docket No. 31420; Amdt. No. 4001]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational

facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 6, 2022. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 2022.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590-0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fr.inspection@nara.gov or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone (405) 954-4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPs, Takeoff Minimums and/or ODPS. The complete regulatory

description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260-3, 8260-4, 8260-5, 8260-15A, 8260-15B, when required by an entry on 8260-15A, and 8260-15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria

contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on March 18, 2022.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721-44722.

■ 2. Part 97 is amended to read as follows:

Effective 19 May 2022

Colorado Springs, CO, KCOS, ILS OR LOC RWY 35L, ILS RWY 35L (SA CAT II), Amdt 40

Colorado Springs, CO, KCOS, NDB RWY 35L, Amdt 28

Dublin, GA, KDBN, ILS OR LOC RWY 2, Amdt 3

Idaho Falls, ID, KIDA, ILS OR LOC RWY 21, Amdt 12A

Idaho Falls, ID, KIDA, RNAV (GPS) Y RWY 3, Amdt 2A

Idaho Falls, ID, KIDA, RNAV (GPS) Y RWY 21, Amdt 2A

Idaho Falls, ID, KIDA, RNAV (RNP) Z RWY 3, Amdt 1A

Idaho Falls, ID, KIDA, RNAV (RNP) Z RWY 21, Amdt 1A

Pocatello, ID, KPIH, ILS OR LOC RWY 21, Amdt 27

Pocatello, ID, KPIH, RNAV (GPS) RWY 3, Amdt 2

Pocatello, ID, KPIH, RNAV (GPS) RWY 21, Amdt 2

Galesburg, IL, KGBG, RNAV (GPS) RWY 3, Orig-C

Galesburg, IL, KGBG, RNAV (GPS) RWY 21, Orig-C

Frankfort, IN, KFKR, RNAV (GPS) RWY 27, Amdt 1B

Kokomo, IN, KOKK, ILS OR LOC RWY 23, Amdt 11

Kokomo, IN, KOKK, RNAV (GPS) RWY 5, Amdt 1A

Kokomo, IN, KOKK, RNAV (GPS) RWY 23, Amdt 1D

Kokomo, IN, KOKK, VOR RWY 32, Amdt 21, CANCELLED

Marion, IN, KMZZ, ILS OR LOC RWY 4, Amdt 8A

Old Town, ME, KOLD, RNAV (GPS) RWY 12, Amdt 1

Old Town, ME, KOLD, RNAV (GPS) RWY 22, Amdt 1

Old Town, ME, KOLD, RNAV (GPS) RWY 30, Amdt 1

Old Town, ME, Dewitt Fld/Old Town Muni, Takeoff Minimums and Obstacle DP, Amdt 1

Battle Creek, MI, KBTL, ILS OR LOC RWY 23R, Amdt 20

Ludington, MI, Mason County, Takeoff Minimums and Obstacle DP, Amdt 7

Sturgis, MI, KIRS, NDB RWY 18, Amdt 6

Sturgis, MI, KIRS, NDB RWY 24, Amdt 11

Twin Bridges, MT, KRVF, RNAV (GPS) RWY 17, Amdt 1

Twin Bridges, MT, KRVF, RNAV (GPS) RWY 35, Amdt 1

Silver City, NM, K SVC, RNAV (GPS) RWY 8, Amdt 1

Silver City, NM, K SVC, RNAV (GPS) RWY 26, Amdt 1

Tulsa, OK, KTUL, ILS OR LOC RWY 18R, Amdt 8

Tulsa, OK, KTUL, RADAR-1, Amdt 19

Tulsa, OK, KTUL, RNAV (GPS) RWY 18L, Amdt 2

Tulsa, OK, KTUL, RNAV (GPS) RWY 18R, Amdt 2

Tulsa, OK, KTUL, RNAV (GPS) RWY 36L, Amdt 1

Vancouver, WA, K VUO, LDA-A, Amdt 2, CANCELLED

Vancouver, WA, K VUO, RNAV (GPS)-B, Orig *RESCINDED*: On March 14, 2022 (87 FR 14165), the FAA published an Amendment in Docket No. 31418, Amdt No. 3999, to Part 97 of the Federal Aviation Regulations under section 97.29, 97.33 and 97.37. The following entries for Rangeley, ME, Detroit, MI, and Troy, MI, effective May 19, 2022, are hereby rescinded in their entirety:

Rangeley, ME, 8B0, RNAV (GPS) RWY 14, Orig

Rangeley, ME, 8B0, RNAV (GPS) RWY 32, Orig

Detroit, MI, KYIP, ILS OR LOC RWY 5, Orig

Detroit, MI, KYIP, ILS OR LOC RWY 5R, Amdt 16, CANCELLED

Detroit, MI, KYIP, ILS OR LOC RWY 23, Orig

Detroit, MI, KYIP, ILS OR LOC RWY 23L, Amdt 8, CANCELLED

Detroit, MI, KYIP, RNAV (GPS) RWY 5, Orig

Detroit, MI, KYIP, RNAV (GPS) RWY 5R, Amdt 2, CANCELLED

Detroit, MI, KYIP, RNAV (GPS) RWY 23, Orig

Detroit, MI, KYIP, RNAV (GPS) RWY 23L, Amdt 2, CANCELLED

Detroit, MI, Willow Run, Takeoff Minimums and Obstacle DP, Amdt 11

Troy, MI, KVLL, RNAV (GPS) RWY 10, Amdt 3A

Troy, MI, KVLL, Takeoff Minimums and Obstacle DP, Amdt 4B

[FR Doc. 2022-07202 Filed 4-5-22; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31421; Amdt. No. 4002]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 6, 2022. The compliance date for each

SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 2022.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590-0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email fr.inspection@nara.gov or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P-NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register**

expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the ADDRESSES section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for

Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on March 18, 2022.

Thomas J Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, CFR part 97, (is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
21-Apr-22 ...	MN	Luverne	Quentin Aanenson Fld	2/3056	3/1/22	RNAV (GPS) RWY 36, Orig-A.
21-Apr-22 ...	AZ	Payson	Payson	2/4544	3/1/22	RNAV (GPS)-A, Amdt 1.
21-Apr-22 ...	AZ	Willcox	Cochise County	2/5159	3/1/22	RNAV (GPS) RWY 3, Amdt 1B.
21-Apr-22 ...	AZ	Willcox	Cochise County	2/5161	3/1/22	RNAV (GPS) RWY 21, Amdt 1A.
21-Apr-22 ...	GA	Camilla	Camilla-Mitchell County	2/6074	3/7/22	RNAV (GPS) RWY 26, Amdt 1C.
21-Apr-22 ...	GA	Camilla	Camilla-Mitchell County	2/6075	3/7/22	RNAV (GPS) RWY 8, Amdt 1B.
21-Apr-22 ...	WI	Prairie Du Chien	Prairie Du Chien Muni	2/6166	3/3/22	RNAV (GPS) RWY 32, Orig-C.
21-Apr-22 ...	WI	Prairie Du Chien	Prairie Du Chien Muni	2/6167	3/3/22	RNAV (GPS) RWY 29, Orig-C.
21-Apr-22 ...	WI	Prairie Du Chien	Prairie Du Chien Muni	2/6168	3/3/22	RNAV (GPS) RWY 14, Orig-C.
21-Apr-22 ...	AR	Siloam Springs	Smith Fld	2/6587	3/7/22	RNAV (GPS) RWY 36, Orig.
21-Apr-22 ...	TN	Sparta	Upper Cumberland Rgnl	2/7124	3/7/22	NDB RWY 4, Amdt 4C.
21-Apr-22 ...	TN	Sparta	Upper Cumberland Rgnl	2/7126	3/7/22	RNAV (GPS) RWY 22, Orig-C.
21-Apr-22 ...	AZ	Safford	Safford Rgnl	2/7525	3/1/22	RNAV (GPS) RWY 12, Orig-D.
21-Apr-22 ...	TN	Sparta	Upper Cumberland Rgnl	2/7631	3/7/22	ILS OR LOC RWY 4, Amdt 1B.
21-Apr-22 ...	ID	Twin Falls	Joslin Fld/Magic Valley Rgnl ...	2/8506	3/2/22	RNAV (GPS) RWY 8, Amdt 1A.
21-Apr-22 ...	ID	Twin Falls	Joslin Fld/Magic Valley Rgnl ...	2/8507	3/2/22	VOR RWY 8, Amdt 5A.
21-Apr-22 ...	ID	Twin Falls	Joslin Fld/Magic Valley Rgnl ...	2/8508	3/2/22	VOR/DME RWY 8, Amdt 1A.
21-Apr-22 ...	WI	Tomahawk	Tomahawk Rgnl	2/8517	3/3/22	RNAV (GPS) RWY 27, Amdt 2B.
21-Apr-22 ...	WI	Tomahawk	Tomahawk Rgnl	2/8518	3/3/22	RNAV (GPS) RWY 9, Amdt 2D.
21-Apr-22 ...	IA	Waterloo	Waterloo Rgnl	2/8563	3/2/22	RNAV (GPS) RWY 36, Amdt 1.
21-Apr-22 ...	TX	Eastland	Eastland Muni	2/8731	3/1/22	RNAV (GPS) RWY 17, Orig-C.
21-Apr-22 ...	TX	Hamilton	Hamilton Muni	2/8759	3/1/22	RNAV (GPS) RWY 18, Amdt 1C.
21-Apr-22 ...	TX	Hamilton	Hamilton Muni	2/8761	3/1/22	RNAV (GPS) RWY 36, Amdt 1C.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
21-Apr-22 ...	TX	Eastland	Eastland Muni	2/8764	3/1/22	RNAV (GPS) RWY 35, Amdt 2B.
21-Apr-22 ...	TX	Seminole	Gaines County	2/8784	3/1/22	RNAV (GPS) RWY 35, Amdt 1.
21-Apr-22 ...	WA	Port Townsend	Jefferson County Intl	2/8791	3/1/22	RNAV (GPS)-A, Orig-A.
21-Apr-22 ...	IA	Creston	Creston Muni	2/8865	3/1/22	RNAV (GPS) RWY 34, Amdt 1B.
21-Apr-22 ...	TX	Pearsall	Mc Kinley Fld	2/8871	3/1/22	VOR/DME OR GPS-A, Amdt 2B.
21-Apr-22 ...	MO	Marshall	Marshall Meml Muni	2/8873	3/1/22	RNAV (GPS) RWY 36, Amdt 3B.
21-Apr-22 ...	TX	Greenville	Majors	2/8888	3/1/22	RNAV (GPS) RWY 35, Amdt 1.
21-Apr-22 ...	TX	Greenville	Majors	2/8889	3/1/22	TACAN RWY 17, Orig-A.
21-Apr-22 ...	WI	Chetek	Chetek Muni/Southworth	2/8904	3/1/22	RNAV (GPS) RWY 35, Orig-D.
21-Apr-22 ...	WI	Chetek	Chetek Muni/Southworth	2/8905	3/1/22	RNAV (GPS) RWY 17, Orig-F.
21-Apr-22 ...	WI	Eau Claire	Chippewa Valley Rgnl	2/8915	3/1/22	VOR-A, Amdt 22.
21-Apr-22 ...	PA	Lancaster	Lancaster	2/8916	3/7/22	VOR/DME RWY 8, Amdt 6C.
21-Apr-22 ...	MN	Pipestone	Pipestone Muni	2/8927	3/1/22	RNAV (GPS) RWY 18, Amdt 1B.
21-Apr-22 ...	WI	Black River Falls	Black River Falls Area	2/9095	3/1/22	RNAV (GPS) RWY 26, Orig-B.
21-Apr-22 ...	WI	Black River Falls	Black River Falls Area	2/9096	3/1/22	RNAV (GPS) RWY 8, Amdt 1A.
21-Apr-22 ...	WI	Shell Lake	Shell Lake Muni	2/9098	3/1/22	RNAV (GPS) RWY 14, Orig-B.
21-Apr-22 ...	WI	Shell Lake	Shell Lake Muni	2/9099	3/1/22	RNAV (GPS) RWY 32, Orig-B.
21-Apr-22 ...	WI	Phillips	Price County	2/9100	3/1/22	RNAV (GPS) RWY 24, Orig-B.
21-Apr-22 ...	WI	Phillips	Price County	2/9102	3/1/22	RNAV (GPS) RWY 19, Orig-C.
21-Apr-22 ...	NJ	Teterboro	Teterboro	2/9131	3/7/22	RNAV (GPS) Y RWY 6, Amdt 2D.
21-Apr-22 ...	CA	Imperial	Imperial County	2/9141	3/2/22	VOR OR GPS-A, Amdt 4B.
21-Apr-22 ...	IA	Muscatine	Muscatine Muni	2/9253	3/3/22	RNAV (GPS) RWY 6, Orig.
21-Apr-22 ...	TX	Ingleside	Mccampbell-Porter	2/9880	3/3/22	RNAV (GPS) RWY 31, Amdt 1.
21-Apr-22 ...	TX	Ingleside	Mccampbell-Porter	2/9881	3/3/22	RNAV (GPS) RWY 13, Amdt 1.

[FR Doc. 2022-07203 Filed 4-5-22; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE-2022-0001; 223E1700D2
EEEE500000 ET1SF0000.EAQ000]

RIN 1014-AA54

Oil, Gas and Sulfur Operations in the Outer Continental Shelf—Adjustment of Service Fees

AGENCY: Bureau of Safety and Environmental Enforcement (BSEE), Interior.

ACTION: Direct final rule.

SUMMARY: This final rule amends BSEE regulations to update service fees that cover BSEE's cost of processing and filing certain documents relating to its oil and gas resources program to account for inflation from 2013 through 2021. BSEE also changes its website link used by operators to make payments for service fees in this rule.

DATES: This final rule is effective April 6, 2022. The incorporation by reference of certain publications listed in this rule was approved by the Director as of November 7, 2016.

FOR FURTHER INFORMATION CONTACT: Eric Modrow, Chief, Office of Budget, 703-787-1694 or Kirk Malstrom, Chief, Regulations and Standards Branch, 703-787-1751.

SUPPLEMENTARY INFORMATION:

I. BSEE Statutory and Regulatory Authority

BSEE derives its authority principally from the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331-1356(a)). Congress enacted OCSLA in 1953, establishing Federal control over the Outer Continental Shelf (OCS) and authorizing the Secretary of the Interior (Secretary) to regulate oil and gas exploration, development, and production operations on the OCS. The Secretary has authorized BSEE to perform certain of these functions (30 CFR 250.101).

The BSEE regulatory program is comprehensive and provides for regulatory oversight over a wide range of facilities and activities including drilling, completion, workover, production, pipeline, and decommissioning operations. To carry out its responsibilities, BSEE develops and enforces regulations to enhance safety and environmental protection for offshore exploration and development of oil and natural gas on the OCS and to reflect advancements in technology and new information. BSEE also conducts onsite inspections to ensure compliance with regulations, lease terms, and approved plans and permits, and operates an oil spill response planning and preparedness program. Detailed information concerning BSEE's regulations and guidance to the offshore industry may be found on BSEE's website at <https://www.bsee.gov/what-we-do/offshore-regulatory-programs/regulations-standards>.

II. Background

BSEE has authority to recover the full cost of services that confer special benefits under the Independent Offices Appropriation Act (31 U.S.C. 9701), the Fiscal Year 1996 Omnibus Appropriations Bill (Pub. L. 104-134, 110 Stat. 1321, April 26, 1996), and Office of Management and Budget (OMB) Circular A-25. BSEE is required to charge the full cost for federal services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. The regulations at 30 CFR 250.125(a) provide that BSEE will periodically adjust the fees set forth in that provision for inflation according to changes in the Implicit Price Deflator for Gross Domestic Product (IPD-GDP), which is published quarterly by the Department of Commerce, Bureau of Economic Analysis (BEA).

The regulation at 30 CFR 250.126(a) also requires payments of fees for services to be filed electronically. The BSEE website currently enables operators to make electronic payments; this rule clarifies how to access a Fees for Services web page directly without scrolling through the website. This informational change to the existing URL identified in the regulation simplifies the process for operators to make electronic payments for fees at <https://www.bsee.gov/who-we-are/working-with-us/Fees-for-Services>.

BSEE has not implemented inflation-based adjustments for service fees since 2013. This rulemaking will prevent further loss of revenue from recipients

of government services in accord with Congress' intent as expressed in authorities cited above. The highest adjustment, in dollar terms, is to the fee for Platform Application—Installation—Under the Platform Verification Program, which will increase by \$3,710 from a previous level of \$22,734. BSEE considers this dollar amount insignificant as compared to the considerable operational costs and liability risks associated with activities on the OCS.

BSEE charges cost recovery fees for 31 separate services it provides to non-Federal recipients, as set out in 30 CFR 250.125(a). BSEE published a proposed rule to modify many of these cost recovery fees on November 17, 2016 (81 FR 81033), "Adjustments to Cost Recovery Fees Relating to the Regulation of Oil, Gas, and Sulfur Activities on the Outer Continental Shelf." Following an extension of the comment period on January 5, 2017 (82 FR 1284), BSEE received public comments until February 16, 2017. Ultimately, the Department did not publish a final rule associated with the 2016 Notice of Proposed Rulemaking (NPRM). This direct final rule does not examine issues raised in the 2016 NPRM; instead, this rule focuses only on inflation-based adjustments to service fees. BSEE may pursue a separate, future rulemaking to adjust these fees based on a recalculation of actual agency costs.

The Department finds that good cause exists under the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to implement this final rule for inflation adjustments without prior public notice and comment. BSEE provided the public with an opportunity to comment

on the adjustment procedure used in this rule during the public comment period when it promulgated 30 CFR 250.125(a) at 70 FR 49875 (Aug. 25, 2005), as amended at 71 FR 40909 (July 19, 2006); 72 FR 25199 (May 4, 2007); 73 FR 49946 (Aug. 25, 2008); 75 FR 20288 (Apr. 19, 2010); and 78 FR 60213 (October. 1, 2013) (which was also a direct final rule).¹ The calculation of these adjustments is based on the change in the BEA IPD–GDP, as dictated by existing regulation. The amount of the adjustment is not within BSEE's discretion where Congress prescribed that "each service or thing of value provided by an agency . . . is to be self-sustaining to the extent possible." 31 U.S.C. 9701(a). Accordingly, because the rule merely implements existing regulatory procedures established through prior rulemakings, employing preestablished benchmarks outside the Department's discretion or control, public notice and comment procedures are unnecessary.

III. Discussion of Final Rule

In this direct final rule, BSEE is adjusting cost recovery service fees to account for inflation in accordance with 30 CFR 250.125(a). These cost recovery service fees were last updated on October 1, 2013, when BSEE published a final rule on "Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Adjustment of Service Fees" in the **Federal Register** (78 FR 60213). The 2013 update included fee adjustments to account for inflation through the year 2012. This final rule is based on the change in the IPD–GDP from 2013 through 2021, thus reflecting the rate of inflation over 9 years.

The inflation rate between any 2 years is calculated as the percentage

difference between the measure of the level of prices for a designated year (e.g., 2021) and some previous year (e.g., 2013) of all new, domestically produced, final goods and services in the economy, as contained in the BEA Table 1.1.9, IPD–GDP available at http://www.bea.gov/iTable/index_nipa.cfm. The BEA Table 1.1.9 IPD–GDP shows a percentage difference between the measure of the level of prices between 2021 and 2013 of 16.32 percent. The 2022 cost recovery service fees are calculated by increasing the 2013 cost recovery service fee value by 16.32 percent. The calculated value is rounded to the nearest dollar to establish the 2022 cost recovery service fee. Only the service fees at 30 CFR 250.125(a) will change.

While BEA may revise the inflation rate in the future, BSEE will retain this published cost recovery service fee schedule until BSEE publishes an updated cost recovery service fee schedule in the **Federal Register**.

The following table lists the types of services BSEE performs when it receives a plan, application, permit, or other request; the associated regulatory citation for each type of request; the existing and proposed fee; and the acceptable payment type for each service, which are credit card and electronic check through the Automated Clearing House (ACH-debit). Because the current U.S. Treasury limit on credit card payments is \$24,999.99, an ACH-debit must be used for payments of \$25,000 or more. The following page on the BSEE website provides information to operators on how to pay the service fees in 30 CFR 250.125(a): <https://www.bsee.gov/who-we-are/working-with-us/Fees-for-Services>.

Service—processing of the following:	2013 Fee amount (current)	30 CFR citation	2022 Fee amount	Payment type
(1) Suspension of Operations/Suspension of Production (SOO/SOP) Request.	\$2,123	§ 250.171(e)	\$2,469	Credit Card or ACH-debit.
(2) Deepwater Operations Plan	\$3,599	§ 250.292(q)	\$4,186	Credit Card or ACH-debit.
(3) Application for Permit to Drill (APD; Form BSEE–0123).	\$2,113 for initial applications only; no fee for revisions.	§ 250.410(d); § 250.513(b); § 250.1617(a).	\$2,458 for initial applications only; no fee for revisions.	Credit Card or ACH-debit.
(4) Application for Permit to Modify (APM; Form BSEE–0124).	\$125	§ 250.465(b); § 250.513(b); § 250.613(b); § 250.1618(a); § 250.1704(g).	\$145	Credit Card or ACH-debit.

¹ See also, 77 FR 50891 (Aug. 22, 2012), 81 FR 26014 (Apr. 29, 2016), and 81 FR 61916 (Sept. 7, 2016).

Service—processing of the following:	2013 Fee amount (current)	30 CFR citation	2022 Fee amount	Payment type
(5) New Facility Production Safety System Application for facility with more than 125 components.	\$5,426 A \$14,280 additional fee will be charged if BSEE conducts a pre-production inspection of a facility offshore, and \$7,426 for an inspection of a facility while in a shipyard. A component is a piece of equipment or ancillary system that is protected by one or more of the safety devices required by API RP 14C (as incorporated by reference in § 250.198).	§ 250.842	\$6,312 A \$16,610 additional fee will be charged if BSEE conducts a pre-production inspection of a facility offshore, and \$8,638 for an inspection of a facility while in a shipyard. A component is a piece of equipment or ancillary system that is protected by one or more of the safety devices required by API RP 14C (as incorporated by reference in § 250.198).	Credit Card or ACH-debit.
(6) New Facility Production Safety System Application for facility with 25–125 components.	\$1,314 A \$8,967 additional fee will be charged if BSEE conducts a pre-production inspection of a facility offshore, and \$5,141 for an inspection of a facility while in a shipyard.	§ 250.842	\$1,528 A \$10,430 additional fee will be charged if BSEE conducts a pre-production inspection of a facility offshore, and \$5,980 for an inspection of a facility while in a shipyard.	Credit Card or ACH-debit.
(7) New Facility Production Safety System Application for facility with fewer than 25 components.	\$652	§ 250.842	\$758	Credit Card or ACH-debit.
(8) Production Safety System Application—Modification with more than 125 components reviewed.	\$605	§ 250.842	\$704	Credit Card or ACH-debit.
(9) Production Safety System Application—Modification with 25–125 components reviewed.	\$217	§ 250.842	\$252	Credit Card or ACH-debit.
(10) Production Safety System Application—Modification with fewer than 25 components reviewed.	\$92	§ 250.842	\$107	Credit Card or ACH-debit.
(11) Platform Application—Installation—Under the Platform Verification Program.	\$22,734	§ 250.905(l)	\$26,444	ACH-debit Only.
(12) Platform Application—Installation—Fixed Structure Under the Platform Approval Program.	\$3,256	§ 250.905(l)	\$3,787	Credit Card or ACH-debit.
(13) Platform Application—Installation—Caisson/Well Protector.	\$1,657	§ 250.905(l)	\$1,927	Credit Card or ACH-debit.
(14) Platform Application—Modification/Repair.	\$3,884	§ 250.905(l)	\$4,518	Credit Card or ACH-debit.
(15) New Pipeline Application (Lease Term).	\$3,541	§ 250.1000(b)	\$4,119	Credit Card or ACH-debit.
(16) Pipeline Application—Modification (Lease Term).	\$2,056	§ 250.1000(b)	\$2,392	Credit Card or ACH-debit.
(17) Pipeline Application—Modification (ROW).	\$4,169	§ 250.1000(b)	\$4,849	Credit Card or ACH-debit.
(18) Pipeline Repair Notification	\$388	§ 250.1008(e)	\$451	Credit Card or ACH-debit.
(19) Pipeline Right-of-Way (ROW) Grant Application.	\$2,771	§ 250.1015(a)	\$3,223	Credit Card or ACH-debit.
(20) Pipeline Conversion of Lease Term to ROW.	\$236	§ 250.1015(a)	\$275	Credit Card or ACH-debit.
(21) Pipeline ROW Assignment	\$201	§ 250.1018(b)	\$234	Credit Card or ACH-debit.
(22) 500 Feet from Lease/Unit Line Production Request.	\$3,892	§ 250.1156(a)	\$4,527	Credit Card or ACH-debit.
(23) Gas Cap Production Request	\$4,953	§ 250.1157	\$5,761	Credit Card or ACH-debit.
(24) Downhole Commingling Request.	\$5,779	§ 250.1158(a)	\$6,722	Credit Card or ACH-debit.
(25) Complex Surface Commingling and Measurement Application.	\$4,056	§ 250.1202(a); § 250.1203(b); § 250.1204(a).	\$4,718	Credit Card or ACH-debit.
(26) Simple Surface Commingling and Measurement Application.	\$1,371	§ 250.1202(a); § 250.1203(b); § 250.1204(a).	\$1,595	Credit Card or ACH-debit.
(27) Voluntary Unitization Proposal or Unit Expansion.	\$12,619	§ 250.1303(d)	\$14,678	Credit Card or ACH-debit.
(28) Unitization Revision	\$896	§ 250.1303(d)	\$1,042	Credit Card or ACH-debit.
(29) Application to Remove a Platform or Other Facility.	\$4,684	§ 250.1727	\$5,448	Credit Card or ACH-debit.
(30) Application to Decommission a Pipeline (Lease Term).	\$1,142	§ 250.1751(a) or § 250.1752(a)	\$1,328	Credit Card or ACH-debit.
(31) Application to Decommission a Pipeline (ROW).	\$2,170	§ 250.1751(a) or § 250.1752(a)	\$2,524	Credit Card or ACH-debit.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This rule is not significant under Executive Order (E.O.) 12866.

1. These amendments are administrative and procedural. This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. A cost-benefit and economic analysis is not required.

2. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. This rule will not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

4. This rule does not raise novel legal or policy issues.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*). This rule:

1. Will not have an annual effect on the economy of \$100 million or more.

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

3. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The requirements will apply to all entities operating on the OCS.

Unfunded Mandates Reform Act of 1995

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under E.O. 12630, the rule does not have significant takings implications. The rulemaking is not a governmental action capable of interfering with

constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this rulemaking does not have federalism implications. This rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rule will not affect that role. A federalism assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

1. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

2. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department of the Interior's consultation policy, under Departmental Manual Part 512 Chapters 4 and 5, and under the criteria in E.O. 13175. We have determined that it has no substantial direct effects on Federally recognized Indian Tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and that consultation under the Department of the Interior's tribal and ANCSA consultation policies is not required.

Paperwork Reduction Act (PRA) of 1995

This rule does not contain new information collection requirements and a submission under the PRA is not required. Therefore, an information collection request is not being submitted to OMB for review and approval under the PRA (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act of 1969 (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The BSEE has analyzed this rule under the

criteria of NEPA and DOI's regulations implementing NEPA. This rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental Categorical Exclusion in that this rule is "of an administrative, financial, legal, technical, or procedural nature . . ." Further, BSEE has analyzed this rule to determine if it meets any of the extraordinary circumstances that would nevertheless require preparation of an environmental assessment or an environmental impact statement, as set forth in 43 CFR 46.215, and concluded that this rule does not meet any of the criteria for extraordinary circumstances.

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554, app. C section 515, 114 Stat. 2763, 2763A-153-154).

Effects on the Nation's Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

Incorporation by Reference (1 CFR Part 51)

The Director of the Federal Register previously approved the following material for incorporation by reference into the section where it appears in this rule: API RP 14C, Recommended Practice for Analysis, Design, Installation, and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Seventh Edition, March 2001, reaffirmed: March 2007.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral resources, Oil and gas exploration, Penalties, Pipelines, Continental Shelf—mineral resources, Continental Shelf—rights-of-way, Reporting and recordkeeping requirements, and Sulfur.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Bureau of Safety and Environmental Enforcement (BSEE) amends title 30, chapter II, subchapter B, part 250 of the Code of Federal Regulations as follows:

PART 250—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701, 33 U.S.C. 1321(j)(1)(C), 43 U.S.C. 1334.

§ 250.125 Service fees.

(a) * * *

■ 1. Authority citation for part 250 continues to read as follows:

■ 2. In § 250.125, revise paragraphs (a)(1) through (31) to read as follows:

Service—processing of the following:	Fee amount	30 CFR citation
(1) Suspension of Operations/Suspension of Production (SOO/SOP) Request.	\$2,469	§ 250.171(e).
(2) Deepwater Operations Plan (DWOP)	\$4,186	§ 250.292(q).
(3) Application for Permit to Drill (APD; Form BSEE–0123).	\$2,458 for initial applications only; no fee for revisions.	§ 250.410(d); § 250.513(b); § 250.1617(a).
(4) Application for Permit to Modify (APM; Form BSEE–0124).	\$145	§ 250.465(b); § 250.513(b); § 250.613(b); § 250.1618(a); § 250.1704(g).
(5) New Facility Production Safety System Application for facility with more than 125 components.	\$6,312 A \$16,610 additional fee will be charged if BSEE conducts a pre-production inspection of a facility offshore, and \$8,638 for an inspection of a facility while in a shipyard. A component is a piece of equipment or ancillary system that is protected by one or more of the safety devices required by API RP 14C (as incorporated by reference in § 250.198).	§ 250.842.
(6) New Facility Production Safety System Application for facility with 25–125 components.	\$1,528 A \$10,430 additional fee will be charged if BSEE conducts a pre-production inspection of a facility offshore, and \$5,980 for an inspection of a facility while in a shipyard.	§ 250.842.
(7) New Facility Production Safety System Application for facility with fewer than 25 components.	\$758	§ 250.842.
(8) Production Safety System Application—Modification with more than 125 components reviewed.	\$704	§ 250.842.
(9) Production Safety System Application—Modification with 25–125 components reviewed.	\$252	§ 250.842.
(10) Production Safety System Application—Modification with fewer than 25 components reviewed.	\$107	§ 250.842.
(11) Platform Application—Installation—Under the Platform Verification Program.	\$26,444	§ 250.905(l).
(12) Platform Application—Installation—Fixed Structure Under the Platform Approval Program.	\$3,787	§ 250.905(l).
(13) Platform Application—Installation—Caisson/Well Protector.	\$1,927	§ 250.905(l).
(14) Platform Application—Modification/Repair	\$4,518	§ 250.905(l).
(15) New Pipeline Application (Lease Term)	\$4,119	§ 250.1000(b).
(16) Pipeline Application—Modification (Lease Term)	\$2,392	§ 250.1000(b).
(17) Pipeline Application—Modification (ROW)	\$4,849	§ 250.1000(b).
(18) Pipeline Repair Notification	\$451	§ 250.1008(e).
(19) Pipeline Right-of-Way (ROW) Grant Application	\$3,223	§ 250.1015(a).
(20) Pipeline Conversion of Lease Term to ROW	\$275	§ 250.1015(a).
(21) Pipeline ROW Assignment	\$234	§ 250.1018(b).
(22) 500 Feet from Lease/Unit Line Production Request.	\$4,527	§ 250.1156(a).
(23) Gas Cap Production Request	\$5,761	§ 250.1157(b).
(24) Downhole Commingling Request	\$6,722	§ 250.1158(a).
(25) Complex Surface Commingling and Measurement Application.	\$4,718	§ 250.1202(a); § 250.1203(b); § 250.1204(a).
(26) Simple Surface Commingling and Measurement Application.	\$1,595	§ 250.1202(a); § 250.1203(b); § 250.1204(a).
(27) Voluntary Unitization Proposal or Unit Expansion	\$14,678	§ 250.1303(d).
(28) Unitization Revision	\$1,042	§ 250.1303(d).
(29) Application to Remove a Platform or Other Facility.	\$5,448	§ 250.1727.
(30) Application to Decommission a Pipeline (Lease Term).	\$1,328	§ 250.1751(a) or § 250.1752(a).
(31) Application to Decommission a Pipeline (ROW)	\$2,524	§ 250.1751(a) or § 250.1752(a).

* * * * *

■ 3. In § 250.126, revise paragraph (a) to read as follows:

§ 250.126 Electronic payments instructions.

(a) You must file all payments electronically through the Fees for

Services Page on the BSEE website at <https://www.bsee.gov/who-we-are/working-with-us/Fees-for-Services>. This includes, but is not limited to, all OCS applications, permits, or any filing fees. You must include a copy of the *Pay.gov*

confirmation receipt page with your application, permit, or filing fee.

* * * * *

[FR Doc. 2022–07295 Filed 4–5–22; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2021–0774]

RIN 1625–AA08

Special Local Regulation; Montlake Cut, Union Bay Reach, Seattle, Washington

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for a recurring marine event on Lake Washington on the first Saturday of May each year. This action is necessary to provide for the safety of life on the navigable waters during the marine event. This regulation restricts vessel traffic in the designated area during the event unless authorized by the Captain of the Port Sector Puget Sound or a designated representative.

DATES: This rule is effective May 6, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2021–0774 in the “SEARCH” box and click “SEARCH.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Warrant Officer William Martinez, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206–217–6051, email SectorPugetSoundWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
 COTP Captain of the Port Sector Puget Sound
 DHS Department of Homeland Security
 FR Federal Register
 NPRM Notice of Proposed Rulemaking
 § Section
 U.S.C. United States Code

II. Background Information and Regulatory History

The Windermere Cup rowing event is held annually on the first Saturday in May. The Coast Guard received notification of the recurring marine event from the University of Washington. In response, on January 27, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM)

titled Special Local Regulation; Montlake Cut, Union Bay Reach, Seattle, Washington (87 FR 5430). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this Special Local Regulation. During the comment period that ended March 3, 2022, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is establishing a special local regulation for the Windermere Cup rowing event held annually on the first Saturday of May each year from 8 a.m. until 12:00 p.m. This event is held on the navigable waters of the Montlake Cut and Union Bay Reach between Portage Bay and Webster Point on Lake Washington in Seattle, WA.

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Coast Guard Thirteenth District Commander has determined that potential hazards associated with the marine event would pose a safety concern for anyone within the race area. The purpose of this rule is to protect the safety of all waterway users, including event participants and spectators, during the marine event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published January 27, 2022. There is one change in the regulatory text of this rule from the proposed rule in the NPRM. The enforcement period in the NPRM mistakenly indicated an end time of 12 a.m. This text now reads: Until 12 p.m.

This rule establishes a new annually recurring special local regulation on the first Saturday of May from 8 a.m. until 12 p.m. The regulated area will cover all navigable waters from Montlake Cut and Union Bay Reach between Portage Bay and Webster Point on Lake Washington in Seattle, from the southern corner of University of Washington Oceanography pier. The duration of the regulated area is intended to ensure the safety of the public and participants during the rowing race. Non-participant vessels are not permitted to enter, transit through, anchor in, or remain within the regulated area without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and

Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the special local regulation. Vessel traffic would be able to safely transit around this special local regulation area which would impact a small-designated area of the Montlake Cut and Union Bay Reach. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the areas, and the rule will allow vessels to seek permission to enter the areas.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a regulated area lasting 4 hours that would prohibit persons or vessels from transiting the regulated area during the rowing event in Montlake Cut and Union Bay Reach between Portage Bay and Webster Point on Lake Washington in Seattle, WA. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

■ 2. Add § 100.1311 to read as follows:

§ 100.1311 Special Local Regulation; Montlake Cut, Lake Washington, Seattle, Washington.

(a) *Regulated area.* The regulations in this section apply to the following area: The navigable waters from Montlake Cut and Union Bay Reach between Portage

Bay and Webster Point on Lake Washington in Seattle, from the southern corner of University of Washington Oceanography pier at 47°38'57" N, 122°18'45" W thence south to 47°38'46" N, 122°18'45" W, thence eastward to Webster Point Light 21 at 47°38'51" N, 122°16'33" W, thence south to the SR520 bridge at 47°38'37" N, 122°16'34" W. These coordinates are based on North American Datum 83 (NAD 83).

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Puget Sound (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as participants in the race. *Spectator* means any vessel in the vicinity of a marine event with the primary purpose of witnessing the event. *Spectator vessels* can observe the marine event from one of the designated spectator areas. One area is located north of Union Bay Reach in Union Bay. The other is located in the area between the state route 520 bridge and south of Union Bay Reach.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling the Sector Puget Sound Command Center at 206-217-6002. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners, announcement in the local notice to mariners, and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced annually from 8 a.m. until 12 p.m. on the first Saturday of May.

Dated: March 31, 2022.

O.M. Saboe,

Captain, U.S. Coast Guard, Commander, Thirteenth Coast Guard District, Acting.

[FR Doc. 2022-07201 Filed 4-5-22; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2021-0010; FRL-9539-02-R4]

Air Plan Approval; Alabama; Birmingham Limited Maintenance Plan for the 1997 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), via a letter dated September 15, 2020. The SIP revision includes the 1997 8-hour ozone national ambient air quality standards (NAAQS) Limited Maintenance Plan (LMP) for the Birmingham, Alabama Area (hereinafter referred to as the “Birmingham Area” or “Area”). The Birmingham Area is comprised of Jefferson and Shelby Counties. EPA is approving the Birmingham Area LMP because it provides for the maintenance of the 1997 8-hour ozone NAAQS within the Birmingham Area through the end of the second 10-year portion of the maintenance period. This action makes certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in the Birmingham Area federally enforceable as part of the Alabama SIP.

DATES: This rule is effective May 6, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R04-OAR-2021-0010. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials can either be retrieved electronically via www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person

listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8994. Ms. LaRocca can also be reached via electronic mail at larocca.sarah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 1979, under section 109 of the Clean Air Act (CAA or Act), EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. *See* 44 FR 8202 (February 8, 1979). On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. *See* 62 FR 38856 (July 18, 1997).¹ EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set. EPA determined that the 8-hour NAAQS would be more protective of human health, especially for children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 15, 2004, EPA designated the Birmingham Area, which includes Jefferson and Shelby Counties, as nonattainment for the 1997 8-hour ozone NAAQS, and the designation became effective on June 15, 2004. *See* 69 FR 23858 (April 30, 2004). Similarly, on May 21, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the 2008 8-hour ozone NAAQS. EPA designated the

Birmingham Area as unclassifiable/attainment for the 2008 8-hour ozone NAAQS. This designation became effective on July 20, 2012. *See* 77 FR 30088. On November 16, 2017, areas were designated for the 2015 8-hour ozone NAAQS. The Birmingham Area was again designated attainment/unclassifiable for the 2015 8-hour ozone NAAQS, with an effective date of January 16, 2018. *See* 82 FR 54232 (November 16, 2017).

A state may submit a request that EPA redesignate a nonattainment area that is attaining the NAAQS to attainment, and if the area has met other required criteria described in section 107(d)(3)(E) of the CAA, EPA may approve the redesignation request.² One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the NAAQS for the period extending ten years after redesignation, and it must contain such additional measures as necessary to ensure maintenance and such contingency provisions as necessary to assure that violations of the NAAQS will be promptly corrected. Eight years after the effective date of redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the NAAQS for an additional ten years pursuant to CAA section 175A(b) (*i.e.*, ensuring maintenance for 20 years after redesignation).

EPA has published long-standing guidance for states on developing maintenance plans.³ The Calcagni memo provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that projected future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.*, attainment year inventory). *See* Calcagni memo at page 9. EPA clarified in three subsequent

² Section 107(d)(3)(E) of the CAA sets out the requirements for redesignating a nonattainment area to attainment. They include attainment of the NAAQS, full approval of the applicable SIP pursuant to CAA section 110(k), determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

³ John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, “Procedures for Processing Requests to Redesignate Areas to Attainment,” September 4, 1992 (Calcagni memo).

¹ In March 2008, EPA completed another review of the primary and secondary ozone NAAQS and tightened them further by lowering the level for both to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone NAAQS and tightened them by lowering the level for both to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015).

guidance memos that certain areas could meet the CAA section 175A requirement to provide for maintenance by showing that the area was unlikely to violate the NAAQS in the future, using information such as the area's design value⁴ being well below the standard and the area having a historically stable design value.⁵ EPA refers to a maintenance plan containing this streamlined demonstration as an LMP.

EPA has interpreted CAA section 175A as permitting the LMP option because section 175A of the Act does not define how areas may demonstrate maintenance, and in EPA's experience implementing the various NAAQS, areas that qualify for an LMP and have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the LMP guidance memoranda, states seeking an LMP must still submit the other maintenance plan elements outlined in the Calcagni memo, including: An attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, a state seeking an LMP must still submit its section 175A maintenance plan as a revision to its SIP, with all attendant notice and comment procedures. While the LMP guidance memoranda were originally written with respect to certain NAAQS,⁶ EPA has extended the LMP interpretation of section 175A to other NAAQS and pollutants not specifically covered by the previous guidance memos.⁷

In a notice of proposed rulemaking (NPRM), published on February 9, 2022,

⁴ The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone area is the highest design value of any monitoring site in the area.

⁵ See "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas," from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas," from Joseph Paisie, OAQPS, dated October 6, 1995; and "Limited Maintenance Plan Option for Moderate PM₁₀ Nonattainment Areas," from Lydia Wegman, OAQPS, dated August 9, 2001. Copies of these guidance memoranda can be found in the docket for this proposed rulemaking.

⁶ The prior memos addressed: Unclassifiable areas under the 1-hour ozone NAAQS, nonattainment areas for the PM₁₀ (particulate matter with an aerodynamic diameter less than 10 microns) NAAQS, and nonattainment for the carbon monoxide NAAQS.

⁷ See, e.g., 79 FR 41900 (July 18, 2014) (approval of the second ten-year LMP for the Grant County 1971 SO₂ maintenance area).

see 87 FR 7404, EPA proposed to approve Birmingham's LMP because the State made a showing that the Area's ozone concentrations are well below the 1997 8-hour ozone NAAQS and have been historically stable and that it met the other maintenance plan requirements. The details of Alabama's submission and the rationale for EPA's action are explained in the NPRM. Comments on the February 9, 2022, NPRM were due on or before March 11, 2022. EPA received only one comment, which was in support of the February 9, 2022, NPRM.

II. Final Action

EPA is taking final action to approve the Birmingham Area LMP for the 1997 8-hour ozone NAAQS, submitted by ADEM on September 17, 2020, as a revision to the Alabama SIP.⁸ EPA is approving the Birmingham Area LMP because it includes a sufficient update of the various elements of the 1997 8-hour ozone NAAQS Maintenance Plan approved by EPA for the first 10-year portion of the maintenance period (including emissions inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions) and retains the relevant provisions of the SIP under sections 110(k) and 175A of the CAA. EPA also finds that the Birmingham Area qualifies for the LMP option and that the Birmingham Area LMP is sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Birmingham Area over the second 10-year maintenance period (*i.e.*, through 2026).

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

⁸ The SIP revision was adopted by ADEM on September 16, 2020, and submitted by ADEM as a revision to the Alabama SIP on September 17, 2020, via a letter dated September 15, 2020.

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 30, 2022.

Daniel Blackman,
Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 52.50(e), amend the table by adding an entry for “1997 8-Hour Ozone Second 10-Year Limited Maintenance Plan for the Birmingham Area” at the end of the table to read as follows:

§ 52.50 Identification of plan.

* * * * *
(e) * * *

EPA APPROVED ALABAMA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
1997 8-Hour Ozone Second 10-Year Limited Maintenance Plan for the Birmingham Area.	Jefferson County and Shelby County.	9/16/2020	4/6/2022, [Insert citation of publication].	

[FR Doc. 2022-07132 Filed 4-5-22; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220223-0054; RTID 0648-XB928]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the B season apportionment of the 2022 Pacific cod total allowable catch (TAC) allocated to catcher vessels using trawl gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), April 2, 2022, through 1200 hours, A.l.t., June 10, 2022.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907-581-2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The B season apportionment of the 2022 Pacific cod TAC allocated to catcher vessels using trawl gear in the BSAI is 3,262 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the B season apportionment of the 2022 Pacific cod TAC allocated to trawl catcher vessels in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,000 mt and is setting aside the remaining 1,262 mt as

incidental catch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 31, 2022.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based

upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 1, 2022.

Ngagne Jafnar Gueye,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022-07310 Filed 4-1-22; 4:15 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 87, No. 66

Wednesday, April 6, 2022

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE-2017-BT-STD-0022]

RIN 1904-AE47

Energy Conservation Program: Energy Conservation Standards for Automatic Commercial Ice Makers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of rescheduled public meeting.

SUMMARY: On March 25, 2022, the U.S. Department of Energy (“DOE”) published a notification of a webinar and availability of preliminary technical support document for automatic commercial ice makers (“ACIMs”). The document announced a public meeting webinar would be held on April 25, 2022. Additionally, on March 24, 2022, DOE received a request from the Hoshizaki America, Inc. to move the webinar date due to a conflict with an industry-wide conference. To accommodate this scheduling issue, DOE is moving the public meeting webinar for ACIMs to Thursday, May 5, 2022.

DATES: The public meeting webinar regarding the ACIM preliminary analysis, which was announced in the document published at 87 FR 17025 on March 25, 2022, will now be held on May 5, 2022, from 1:00 p.m. until 4:00 p.m.

ADDRESSES: See the “Public Participation” section of this document for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. Interested persons are encouraged to submit comments via email or by using the Federal eRulemaking Portal at www.regulations.gov. Further information on how to submit written comments is provided in the **Federal Register** notices for the ACIM preliminary analysis.

FOR FURTHER INFORMATION CONTACT:

Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE-2J, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 287-1943. Email: ApplianceStandardsQuestions@ee.doe.gov.

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-1777. Email: Sarah.Butler@hq.doe.gov.

For further information on how to submit a comment or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: ApplianceStandardsQuestions@ee.doe.gov.

SUPPLEMENTARY INFORMATION: On March 25, 2022, the U.S. Department of Energy (“DOE”) issued a notification of a webinar and availability of preliminary technical support document for automatic commercial ice makers (“ACIMs”) (87 FR 17025). The document announced a public meeting webinar would be held on April 25, 2022. Additionally, on March 24, 2022, DOE received a request from the Hoshizaki America, Inc. to move the webinar date due to a conflict with a relates ASTM conference (<https://www.regulations.gov/docket/EERE-2017-BT-STD-0022>). To accommodate this scheduling issue, DOE is moving the public meeting webinar for ACIM to Thursday, May 5, 2022.

Public Participation

The time and date of the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE’s website: https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=39&action=viewlive. Participants are responsible for ensuring their systems are compatible with the webinar software.

Any person who has an interest in the topics addressed in either document, or who is representative of a group or class

of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Requests should be sent by email to: ApplianceStandardsQuestions@ee.doe.gov. Persons who wish to speak should include with their request a computer file in Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in these rulemakings and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of the Energy Policy and Conservation Act (“EPCA”) (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar, and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will allow time for prepared general statements by participants and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be

allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

Signing Authority

This document of the Department of Energy was signed on April 1, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 1, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022-07278 Filed 4-5-22; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA-2021-0891; Notice No. 25-21-04-SC]

Special Conditions: Airbus Model A321neoXLR Airplane; Passenger Protection From External Fire

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Airbus Model A321neoXLR airplane. This airplane will have a novel or unusual design feature when compared to the technology envisaged by the airworthiness standards for transport category airplanes. This design feature is an integral rear center tank (RCT). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send comments on or before May 23, 2022.

ADDRESSES: Send comments identified by Docket No. FAA-2021-0891 using any of the following methods:

- *Federal eRegulations Portal:* Go to <http://www.regulations.gov/> and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202-493-2251.

Privacy: Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received without change to <http://www.regulations.gov/>, including any personal information you provide. The FAA will also post a report

summarizing each substantive verbal contact received about this proposal.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this Notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this Notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of this Notice. Submissions containing CBI should be sent to Shannon Lennon, Human Machine Interface, AIR-626, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206-231-3209; email shannon.lennon@faa.gov. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for this rulemaking.

Docket: Background documents or comments received may be read at <http://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Shannon Lennon, Human Machine Interface, AIR-626, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206-231-3209; email shannon.lennon@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any

recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On September 16, 2019, Airbus applied for an amendment to Type Certificate No. A28NM to include the new Model A321neoXLR airplane. The Model A321neoXLR airplane, which is a derivative of the Model A321neoACF airplane currently approved under Type Certificate No. A28NM, is a twin-engine transport category aircraft that seats 244 passengers and has a maximum takeoff weight of 202,000 lbs.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Airbus must show that the Model A321neoXLR airplane meets the applicable provisions of the regulations listed in Type Certificate No. A28NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (e.g., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A321NeoXLR airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A321NeoXLR airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Feature

The Airbus Model A321NeoXLR airplane will incorporate the following novel or unusual design feature:

An integral RCT.

Discussion

The proposed Airbus Model A321neoXLR incorporates an integral RCT. This tank is a “center” fuel tank, in that would, if approved, be located in the airplane fuselage rather than in its wings. The tank is a “rear” tank, that would be located aft of the wheel bay; it would be in an area of the lower fuselage that partially replaces the aft cargo compartment of the airplane from which this proposed model is derived. The top of the tank would be directly below the floor of the passenger cabin. The fuel tank would be “integral” to the airplane, in that its walls would be part of the airplane structure. The exterior skin of the airplane fuselage would constitute part of the walls of the fuel tank, and these areas would lack the thermal/acoustic insulation that usually lines the exterior skin of an airplane fuselage.

This proposed design was not envisaged by the FAA’s regulatory requirements for insulation installations on transport category airplanes. 14 CFR 25.856(b) requires all thermal/acoustic insulation in the lower half of the airplane fuselage and their installation to comply with the flame penetration resistance test of Appendix F Part VII. The FAA adopted § 25.856(b) to raise the level of post-crash fire safety on transport category airplanes. Part VII of Appendix F requires a stringent test method for all thermal/acoustic insulation proposed for installation in the lower half of the fuselage. The FAA’s intent in imposing this requirement was to ensure that this insulation provides an additional barrier between the occupants and an external post-crash fire, especially a fire resulting from a pool of spilled aviation fuel.¹ This barrier extends the time available for evacuation.

While the rule applies to the thermal/acoustic insulation that an applicant proposes as part of their design, it does not require applicants to install such insulation. Since the fuselage skins of the lower half of transport category airplanes are generally insulated, and were at the time these standards were developed, the FAA considered this approach to be sufficient to ensure safety. The rulemaking also noted,

however, that if applicants began to propose designs that omitted this thermal/acoustic insulation, the FAA would revisit the need for a specific fuselage burnthrough standard.²

Thus, since this proposed design will lack thermal/acoustic insulation under the fuselage skin in the area of the fuel tank, current FAA regulations do not ensure that it will provide a continuous flame penetration (burnthrough) resistant barrier between the passengers and an external fire, nor that it will provide enough protection, against an external post-crash fire, to allow time for passengers to evacuate.

According to Airbus, its proposed design does not allow for compliant thermal/acoustic insulation to be placed beneath the cabin floor. This large volume of unheated liquid (fuel), directly below the floor of the passenger cabin, would, without mitigation, create a ‘cold feet’ effect for the passengers above it. Therefore, Airbus plans to install insulation panels between the fuel tank and the cabin floor, for comfort reasons. These insulation panels would normally be required to meet § 25.856(b). However, Airbus states that it is technically not feasible to install thermal/acoustic insulation that complies with § 25.856(b), due to the lack of space in this area, and the need to keep nearby decompression panels free of blockages and ensure adequate ventilation.

To address the assumption in the FAA’s current flammability standards that proposed airplane designs would include thermal/acoustic insulation in the lower fuselage, and to ensure that this proposed design does not reduce the time available for passenger evacuation in the case of a post-crash external fire, special conditions are needed. Specifically, the FAA proposes to require that the lower half of the airplane fuselage, spanning the longitudinal area of the tank, be resistant to fire penetration. “Resistant to fire penetration” would, for this special condition, mean that this area provides fire penetration resistance equivalent to the resistance which would be provided if the fuselage were lined with thermal/acoustic insulation that meets the flame penetration resistance test requirements of part VII of Appendix F. The applicant’s method of compliance may, but is not required to, be based upon any inherent flame penetration resistance capability

¹ See pg. 2 of FAA Advisory Circular 25.856–2A, *Installation of Thermal/Acoustic Insulation for Burnthrough Protection* (Jul. 29, 2008), available at [drs.faa.gov](https://www.faa.gov).

² *Improved Flammability Standards for Thermal/Acoustic Insulation Materials Used In Transport Category Airplanes*, 68 FR 45046, 45049 (Jul. 31, 2003).

provided by the construction of the fuel tank and/or other surrounding features.

The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Airbus Model A321NeoXLR airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

The Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Airbus Model A321NeoXLR airplanes.

Passenger Protection From External Fire

The lower half of the fuselage, spanning the longitudinal location of the rear center fuel tank, must be resistant to fire penetration.

Issued in Kansas City, Missouri, on April 1, 2022.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022-07228 Filed 4-5-22; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2022-0394; Project Identifier MCAI-2021-00904-T]

RIN 2120-AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC-8-401 and -402 airplanes. This proposed AD was prompted by reports of nose wheel steering (NWS) hydraulic motors jamming during pushback or towing. This proposed AD would require doing an inspection to determine the part number and serial number of the NWS hydraulic motor, and re-identifying or replacing the NWS hydraulic motor if necessary. This proposed AD would also prohibit the installation of certain NWS hydraulic motors. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 23, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email thd@dehavilland.com; internet <https://dehavilland.com>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South

216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0394; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2022-0394; Project Identifier MCAI-2021-00904-T" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI

as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email 9-avs-nyaco-cos@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2021–28, dated August 5, 2021 (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes. You may examine the MCAI in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2022–0394.

This proposed AD was prompted by reports of NWS hydraulic motors

jamming during pushback or towing caused by worn out piston rod shoes. An investigation revealed that a design change had been introduced by the hydraulic motor supplier that corrected this condition but this change was not documented. Thereby, resulting in a loss of configuration control for this component. The FAA is proposing this AD to address a possible NWS hydraulic motor jam, which could lead to a runway excursion and loss of controllability of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

De Havilland Aircraft of Canada Limited has issued Service Bulletin 84–32–164, Revision A, dated May 13, 2021. This service information describes procedures for doing an inspection to determine the part number and serial number of the NWS hydraulic motor, and re-identifying, the redesigned NWS hydraulic motor, or replacing, the original NWS hydraulic motor, as necessary.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA’s Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described. This proposed AD would also prohibit the installation of certain NWS hydraulic motors.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 52 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 11 work-hours × \$85 per hour = \$935	\$80	Up to \$1,015	Up to \$52,780.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–

2022-0394; Project Identifier MCAI-2021-00904-T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 23, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited Model DHC-8-401 and -402 airplanes, certificated in any category, serial numbers 4001 and 4003 through 4622 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by reports of nose wheel steering (NWS) hydraulic motors jamming during pushback or towing caused by worn out piston rod shoes. The FAA is issuing this AD to address a possible NWS hydraulic motor jam, which could lead to a runway excursion and loss of controllability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

Within 12,000 flight hours or 72 months, whichever occurs first, after the effective date of this AD: Inspect to determine the part number and serial number of the NWS hydraulic motor, and re-identify or replace the NWS hydraulic motor, as applicable, in accordance with paragraph 3.B. of the Accomplishment Instructions of De Havilland Aircraft of Canada Service Bulletin 84-32-164, Revision A, dated May 13, 2021.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install a NWS hydraulic motor, part number (P/N) RS1267-1, P/N RS1267-1 MOD SB 32-13, P/N RS1267-2, P/N RS1267-2 MOD SB 32-13, and P/N RS1267-3, on any airplane.

(i) No Return of Parts

Although De Havilland Aircraft of Canada Service Bulletin 84-32-164, Revision A, dated May 13, 2021, specifies to return certain parts to the manufacturer, this AD does not include that requirement.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using De Havilland Aircraft of Canada Limited Service Bulletin 84-32-164, dated April 20, 2020.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, New York ACO

Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF-2021-28, dated August 5, 2021, for related information. This MCAI may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0394.

(2) For more information about this AD, contact Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531; email 9-avs-nyaco-cos@faa.gov.

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email thd@dehavilland.com; internet <https://dehavilland.com>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

Issued on March 31, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022-07159 Filed 4-5-22; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2022-0393; Project Identifier MCAI-2021-01249-T]

RIN 2120-AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD-500-1A10 and BD-500-1A11 airplanes. This proposed AD was prompted by the discovery that overwing emergency exit door (OWEED) handle covers were difficult to open on some airplanes. This proposed AD would require replacing the existing OWEED handle cover brackets with newly designed OWEED handle cover brackets and the installation of a placard regarding this replacement, as specified in Transport Canada Civil Aviation (TCCA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 23, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact TCCA, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888-663-3639; email AD-CN@tc.gc.ca; internet <https://tc.canada.ca/en/aviation>. You may view this material at the FAA, Airworthiness Products Section, Operational Safety

Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0393.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0393; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT:

Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 201-674-2367; email Gabriel.D.Kim@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2022-0393; Project Identifier MCAI-2021-01249-T" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial

information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 201-674-2367; email Gabriel.D.Kim@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The TCCA, which is the aviation authority for Canada, has issued TCCA AD CF-2021-39, dated November 10, 2021 (TCCA AD CF-2021-39) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus Canada Limited Partnership Models BD-500-1A10 and BD-500-1A11 airplanes.

This proposed AD was prompted by the discovery that overwing emergency exit door (OWEED) handle covers were difficult to open on some airplanes. An investigation revealed that brackets of certain OWEED handle covers are prone to flexure, thus increasing the force necessary to remove the OWEED handle cover beyond design requirements. As a result, the OWEED handle covers must be removed in order to access the emergency exit, which could delay passenger evacuation. The FAA is proposing this AD to address the increased force necessary to remove the OWEED handle cover to access the emergency exit, which could hinder passenger evacuation in emergency. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

TCCA AD CF-2021-39 specifies procedures for replacing the existing OWEED handle cover brackets with newly designed OWEED handle cover brackets and also instructions for installing a placard regarding this replacement. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in TCCA AD CF-2021-39 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate TCCA AD CF-2021-39 by reference in the FAA final rule. This proposed AD would, therefore require compliance with TCCA AD CF-2021-39 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in TCCA AD CF-2021-39 does not mean that operators need comply only with that section. For example, where the AD requirement refers to "all required actions and compliance times," compliance with this AD requirement is not limited to the section titled "Required Action(s) and Compliance Time(s)" in TCCA AD CF-2021-39. Service information required by TCCA AD CF-2021-39 for compliance will be available at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0393 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD would affect 21 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × \$85 per hour = \$255	\$40	\$295	\$6,195

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Docket No. FAA–2022–0393; Project Identifier MCAI–2021–01249–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 23, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada Civil Aviation (TCCA) AD CF–2021–39, dated November 10, 2021 (TCCA AD CF–2021–39).

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Unsafe Condition

This AD was prompted by discovery that overwing emergency exit door (OWEED) handle covers were difficult to open on some airplanes. An investigation revealed that brackets of certain OWEED handle covers are prone to flexure, thus increasing the force necessary to remove the OWEED handle cover beyond design requirements. The FAA is proposing this AD to address the increased force necessary to remove the OWEED handle cover to access the emergency exit, which could hinder passenger evacuation in an emergency.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, TCCA AD CF–2021–39.

(h) Exception to TCCA AD CF–2021–39

Where TCCA AD CF–2021–39 refers to its effective date, this AD requires using the effective date of this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or Airbus Canada Limited Partnership's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) For TCCA AD CF–2021–39, contact TCCA, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email AD-CN@tc.gc.ca; internet <https://tc.canada.ca/en/aviation>. You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2022–0393.

(2) For more information about this AD, contact Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO

Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 201-674-2367; email Gabriel.D.Kim@faa.gov.

Issued on March 31, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022-07161 Filed 4-5-22; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2022-0395; Project Identifier MCAI-2021-01048-T]

RIN 2120-AA64

Airworthiness Directives; ATR-GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2018-18-05, which applies to all ATR-GIE Avions de Transport Régional Model ATR42-200, -300, and -320 airplanes; and AD 2020-09-16, which applies to all ATR-GIE Avions de Transport Régional Model ATR42-200, -300, and -320 airplanes. AD 2018-18-05 and AD 2020-09-16 require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2018-18-05 and AD 2020-09-16, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would retain the requirements of AD 2020-09-16. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 23, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov> Follow the instructions for submitting comments..

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet www.easa.europa.eu. You may find this IBR material on the EASA website at <https://ad.easa.europa.eu>. You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0395.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2022-0395; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT:

Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206-231-3220; email shahram.daneshmandi@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2022-0395; Project Identifier MCAI-2021-01048-T" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider

all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206-231-3220; email shahram.daneshmandi@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2018-18-05, Amendment 39-19384 (83 FR 44463, August 31, 2018) (AD 2018-18-05), which applies to certain ATR-GIE Avions de Transport Régional Model ATR42-200, -300, and -320 airplanes. AD 2018-18-05 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations. The FAA issued AD 2018-18-05 to prevent reduced structural integrity of the airplane.

The FAA also issued AD 2020-09-16, Amendment 39-19912 (85 FR 29596, May 18, 2020) (AD 2020-09-16), which applies to all ATR-GIE Avions de Transport Régional Model ATR42-200, -300, and -320 airplanes. AD 2020-09-

16 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2020–09–16 to address reduced structural integrity of the airplane. AD 2020–09–16 also specifies that accomplishing the revision required by paragraph (g) of that AD terminates all requirements of AD 2018–18–05, but AD 2020–09–16 did not supersede AD 2018–18–05.

Actions Since AD 2018–18–05 and AD 2020–09–16 Were Issued

Since the FAA issued AD 2018–18–05 and AD 2020–09–16, the FAA has determined that new or more restrictive airworthiness limitations are necessary.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0211, dated September 17, 2021 (EASA AD 2021–0211) (also referred to as the MCAI), to correct an unsafe condition for all ATR–GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to prevent reduced structural integrity of the airplane. See the MCAI for additional background information.

Related Service Information Under 14 CFR Part 51

EASA AD 2021–0211 describes new or more restrictive airworthiness limitations for airplane structures and components.

This AD would also require EASA AD 2019–0256, dated October 17, 2019, which the Director of the Federal Register approved for incorporation by reference as of June 22, 2020 (85 FR 29596, May 18, 2020).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA’s Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain the requirements of AD 2020–09–16. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2021–0211 described previously, as proposed for incorporation by reference. Revising the existing maintenance or inspection program, as specified in EASA AD 2021–0211, would terminate the retained requirements from AD 2020–09–16. Any differences with EASA AD 2021–0211 are identified as exceptions in the regulatory text of this proposed AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (e.g., inspections) and Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (m)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0211 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0211 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0211 does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled

“Required Action(s) and Compliance Time(s)” in EASA AD 2021–0211. Service information required by EASA AD 2021–0211 for compliance will be available at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2022–0395 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA’s process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (e.g., inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under “Additional FAA AD Provisions.” This new format includes a “New Provisions for Alternative Actions, Intervals, and CDCCLs” paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action, interval, or CDCCL.

Costs of Compliance

The FAA estimates that this proposed AD affects 26 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2020–09–16 to be \$7,650 (90 work-hours × \$85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since

operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be \$7,650 (90 work-hours × \$85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
 - a. Removing Airworthiness Directive (AD) 2018–18–05, Amendment 39–19384 (83 FR 44463, August 31, 2018); and AD 2020–09–16, Amendment 39–19912 (85 FR 29596, May 18, 2020); and
 - b. Adding the following new AD:

ATR–GIE Avions de Transport Régional:
Docket No. FAA–2022–0395; Project Identifier MCAI–2021–01048–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 23, 2022.

(b) Affected ADs

This AD replaces AD 2018–18–05, Amendment 39–19384 (83 FR 44463, August 31, 2018); and AD 2020–09–16, Amendment 39–19912 (85 FR 29596, May 18, 2020) (AD 2020–09–16).

(c) Applicability

This AD applies to all ATR–GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to prevent reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Revision of the Existing Maintenance or Inspection Program, With New Terminating Action

This paragraph restates the requirements of paragraph (g) of AD 2020–09–16, with a new terminating action. Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0256, dated October 17, 2019 (EASA AD 2019–0256). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2019–0256, With No Changes

This paragraph restates the exceptions specified in paragraph (h) of AD 2020–09–16, with no changes.

(1) The requirements specified in paragraphs (1) and (3) of EASA AD 2019–0256 do not apply to this AD.

(2) Where paragraph (2) of EASA AD 2019–0256 refers to its effective date, this AD requires using June 22, 2020 (the effective date of AD 2020–09–16).

(3) Paragraph (4) of EASA AD 2019–0256 specifies revising "the approved AMP" within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the "limitations, tasks and associated thresholds and intervals" specified in paragraph (4) of EASA AD 2019–0256 within 90 days after June 22, 2020 (the effective date of AD 2020–09–16).

(4) The initial compliance time for doing the tasks specified in paragraph (4) of EASA AD 2019–0256 is at the applicable "associated thresholds" specified in paragraph (4) of EASA AD 2019–0256, or within 90 days after June 22, 2020 (the effective date of AD 2020–09–16), whichever occurs later.

(5) The provisions specified in paragraphs (5) and (6) of EASA AD 2019–0256 do not apply to this AD.

(6) The "Remarks" section of EASA AD 2019–0256 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions, Intervals, and Critical Design Configuration Control Limitations (CDCCLs), With New Exception

This paragraph restates the requirements of paragraph (i) of AD 2020–09–16, with a new exception. Except as required by paragraphs (j) and (l) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections), intervals, and CDCCLs are allowed unless they are approved as specified in the provisions of the "Ref. Publications" section of EASA AD 2019–0256.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0211, dated September 17, 2021 (EASA AD 2021–0211). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2021–0211

(1) Where EASA AD 2021–0211 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0211 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0211 specifies revising "the approved AMP" within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0211 is at the applicable "limitations" and "associated thresholds" as

incorporated by the requirements of paragraph (3) of EASA AD 2021–0211, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0211 do not apply to this AD.

(6) The “Remarks” section of EASA AD 2021–0211 does not apply to this AD.

(l) New Provisions for Alternative Actions, Intervals, and CDCCLs

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.*, inspections), intervals, and CDCCLs are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2021–0211.

(m) Additional FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (n)(2) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or ATR–GIE Avions de Transport Régional’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Related Information

(1) For information about EASA AD 2019–0256 and EASA AD 2021–0211, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet www.easa.europa.eu. You may find these EASA ADs on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2022–0395.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198;

telephone 206–231–3220; email shahram.daneshmandi@faa.gov.

Issued on March 31, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–07157 Filed 4–5–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0333; Airspace Docket No. 22–AGL–6]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airway V–36; Northcentral United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend VHF Omnidirectional Range (VOR) Federal airway V–36 by establishing an airway segment within United States (U.S.) airspace over Lake Superior. The new V–36 airway segment would replace a similar segment that was inadvertently removed in a previous rulemaking action supporting NAV CANADA’s Navigational Aid (NAVAID) Modernization Program. This proposed action supports cross border airway connectivity with NAV CANADA’s V–36 airway between the Thunder Bay, ON, Canada, VOR/Distance Measuring Equipment (VOR/DME) and the Wawa, ON, Canada, VOR/DME NAVAIDs.

DATES: Comments must be received on or before May 23, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0333; Airspace Docket No. 22–AGL–6 at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>.

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at https://www.faa.gov/air_traffic/publications/. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800

Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT:

Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in the northcentral United States and improve the efficient flow of air traffic crossing the U.S./Canada border flying through U.S. and Canadian airspace.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0333; Airspace Docket No. 22–AGL–6) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at <https://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: “Comments to FAA Docket No. FAA–2022–0333; Airspace Docket No. 22–AGL–6.” The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing

date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at <https://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at https://www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

On November 23, 2021, the FAA published a final rule in the **Federal Register** for Docket No. FAA-2022-0279 (86 FR 66453; November 23, 2021) which inadvertently removed the V-36 airway segment in U.S. airspace between the Thunder Bay, ON, Canada, VOR/DME and the Wawa, ON, Canada, VOR/DME. As a result, the cross border connectivity of V-36 at the two U.S./Canada border crossing points for pilots flying between Thunder Bay, ON, Canada, and Wawa, ON, Canada, in Canadian airspace, then U.S. airspace, and then Canadian airspace again was lost. Today, V-36 extends from the

Thunder Bay VOR/DME to the U.S./Canada border, is gapped through U.S. airspace to the U.S./Canada border located east of the first border intersection, and then continues from the U.S./Canada border to the Wawa VOR/DME, and onward.

This action proposes to modify V-36 to establish the missing V-36 airway segment within U.S. airspace to provide the cross border connectivity necessary between the Thunder Bay VOR/DME and Wawa VOR/DME; thus, making that portion of V-36 whole again.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to modify V-36 by establishing a segment of the airway within U.S. airspace that was inadvertently removed in a previous rulemaking action. Additionally, the modification of V-36 will support cross border connectivity of the airway between the Thunder Bay VOR/DME and Wawa VOR/DME. The proposed airway action is described below.

V-36: V-36 currently extends between the Wawa, ON, Canada, VOR/DME and the Sault Ste. Marie, MI, VOR/DME; and between the Elmira, NY, VOR/DME and the intersection of the La Guardia, NY, VOR/DME 310° and Stillwater, NJ, VOR/DME 043° radials (NEION fix). The airspace within Canada is excluded. The FAA proposes to establish an airway segment within U.S. airspace that connects to NAV CANADA's V-36 airway segments between the Thunder Bay, ON, Canada, VOR/DME and the Wawa, ON, Canada, VOR/DME; providing cross border connectivity for the airway between the two NAVAIDs. As a result, V-36 would extend between the Thunder Bay, ON, Canada, VOR/DME and the Sault Ste. Marie, MI, VOR/DME; and between the Elmira, NY, VOR/DME and the intersection of the La Guardia, NY, VOR/DME 310° and the Stillwater, NJ, VOR/DME 043° radials (NEION fix). The airspace within Canada would continue to be excluded.

The NAVAID radials listed in the VOR Federal airway description below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11F, dated August 20, 2021, and effective September 15, 2021, which are incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document would be published subsequently in FAA Order JO 7400.11.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V-36 [Amended]

From Thunder Bay, ON, Canada; Wawa, ON, Canada; to Sault Ste. Marie, MI. From Elmira, NY; INT Elmira 110° and LaGuardia,

NY, 310° radials; to INT LaGuardia 310° and Stillwater, NJ, 043° radials. The airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on April 1, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022-07205 Filed 4-5-22; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2022-0335; Airspace Docket No. 22-AAL-17]

RIN 2120-AA66

Proposed Revocation of Colored Federal Airway Amber 2 (A-2); Northway, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke Colored Federal airway Amber 2 (A-2) in the vicinity of Northway, AK due to the pending decommissioning of Nebesna, AK, (AES) Non-directional Beacon (NDB).

DATES: Comments must be received on or before May 23, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590; telephone: (800) 647-5527, or (202) 366-9826. You must identify FAA Docket No. FAA-2022-0335; Airspace Docket No. 22-AAL-17 at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>.

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at https://www.faa.gov/air_traffic/publications/. For further information, you can contact the Rules and Regulations Group, Federal Aviation.

FOR FURTHER INFORMATION CONTACT: Jesse Acevedo, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2022-0335; Airspace Docket No. 22-AAL-17) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at <https://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2022-0335; Airspace Docket No. 22-AAL-17." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned

with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the internet at <https://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at https://www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from the dependency on NDBs. The advances in technology have allowed for alternate navigation methods to support decommissioning of high cost ground navigation equipment. The FAA conducted a non-rulemaking study in accordance with FAA Order JO 7400.2, Procedures for Handling Airspace Matters in 2021 on AES due to the ongoing high cost of maintenance and repair. As a result of the study, there were no objections received and the FAA added AES to the schedule to be decommissioned.

Colored Federal airway A-2 navigates from the Beaver Creek, YT, Canada, (YXQ) NDB to the Delta Junction, AK, (DJN) NDB. The decommissioning of AES would render A-2 unusable. This proposal would revoke A-2 in its entirety. The proposed revocation of A-2 is mitigated by United States Area

Navigation (RNAV) route T-232 and VHF Omnidirectional Radar (VOR) Federal airway V-444 that overly the current route.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to revoke Colored Federal airway A-2 in the vicinity of Northway, AK due to the decommissioning of AES. A-2 currently navigates between YXQ and DJN. The FAA proposes to revoke the route in its entirety.

Colored Federal airways are published in paragraph 6009(c) of FAA Order JO 7400.11F dated August 10, 2021 and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airway listed in this document would be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures” prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6009(c) Colored Federal Airways.

* * * * *

A-2 [Remove]

* * * * *

Issued in Washington, DC, on April 1, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022-07204 Filed 4-5-22; 8:45 am]

BILLING CODE 4910-13-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2022-0284; FRL-9698-01-R3]

Approval and Promulgation of Air Quality Plans; Pennsylvania; Reasonably Available Control Technology (RACT) Determinations for Hydro Carbide Tool Company’s Case-by-Case Sources Under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for Hydro Carbide Tool Company (Hydro Carbide), a major source of volatile organic compounds (VOC), pursuant to the Commonwealth of Pennsylvania’s conditionally

approved RACT regulations. In this rulemaking action, EPA is proposing to approve source-specific (also referred to as “case-by-case”) RACT determinations submitted by PADEP for VOC sources at Hydro Carbide. This RACT evaluation was submitted to meet RACT requirements for the 1997 and 2008 8-hour ozone national ambient air quality standards (NAAQS). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before May 6, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2022-0284 at <https://www.regulations.gov>, or via email to opila.marycate@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Mr. Riley Burger, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2217. Mr. Burger can also be reached via electronic mail at burger.riley@epa.gov.

SUPPLEMENTARY INFORMATION: On May 7, 2020, PADEP submitted a revision to its SIP to address case-by-case nitrogen oxides (NO_x) and/or VOC RACT for sources at numerous major NO_x and VOC emitting facilities located in the Commonwealth, including Hydro

Carbide¹, which is located in Westmoreland County. This SIP revision is intended to address the facility's VOC RACT requirements under sections 182 and 184 of the CAA for the 1997 and 2008 8-hour ozone NAAQS.

For additional background information on Pennsylvania's "presumptive" RACT II SIP see 84 FR 20274 (May 9, 2019) and on Pennsylvania's source-specific or "case-by-case" RACT determinations see the appropriate technical support document (TSD) which is available online at <https://www.regulations.gov>, Docket No. EPA-R03-OAR-2022-0284.

I. Background

A. 1997 and 2008 8-Hour Ozone NAAQS

Ground level ozone is not emitted directly into the air but is created by chemical reactions between NO_x and VOC in the presence of sunlight. Emissions from industrial facilities, electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are some of the major sources of NO_x and VOC. Breathing ozone can trigger a variety of health problems, particularly for children, the elderly, and people of all ages who have lung diseases such as asthma. Ground level ozone can also have harmful effects on sensitive vegetation and ecosystems.

On July 18, 1997, EPA promulgated a standard for ground level ozone based on 8-hour average concentrations. 62 FR 38856. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. EPA has designated two moderate nonattainment areas in Pennsylvania under the 1997 8-hour ozone NAAQS, namely Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE (the Philadelphia Area) and Pittsburgh-Beaver Valley (the Pittsburgh Area). See 40 CFR 81.339.

On March 12, 2008, EPA strengthened the 8-hour ozone standards, by revising its level to 0.075 ppm averaged over an 8-hour period (2008 8-hour ozone NAAQS). On May 21, 2012, EPA designated five marginal nonattainment areas in Pennsylvania for the 2008 8-hour ozone NAAQS: Allentown-Bethlehem-Easton, Lancaster, Reading, the Philadelphia Area, and the Pittsburgh Area. 77 FR 30088; see also 40 CFR 81.339.

On March 6, 2015, EPA announced its revocation of the 1997 8-hour ozone

NAAQS for all purposes and for all areas in the country, effective on April 6, 2015. 80 FR 12264. EPA has determined that certain nonattainment planning requirements continue to be in effect under the revoked standard for nonattainment areas under the 1997 8-hour ozone NAAQS, including RACT.

B. RACT Requirements for Ozone

The CAA regulates emissions of NO_x and VOC to prevent photochemical reactions that result in ozone formation. RACT is an important strategy for reducing NO_x and VOC emissions from major stationary sources within areas not meeting the ozone NAAQS.

Areas designated nonattainment for the ozone NAAQS are subject to the general nonattainment planning requirements of CAA section 172. Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM) for demonstrating attainment of all NAAQS, including emissions reductions from existing sources through the adoption of RACT. Further, section 182(b)(2) of the CAA sets forth additional RACT requirements for ozone nonattainment areas classified as moderate or higher. Section 182(b)(2) of the CAA sets forth requirements regarding RACT for the ozone NAAQS for VOC sources. Section 182(f) subjects major stationary sources of NO_x to the same RACT requirements applicable to major stationary sources of VOC.²

Section 184(b)(1)(B) of the CAA applies the RACT requirements in section 182(b)(2) to nonattainment areas classified as marginal and to attainment areas located within ozone transport regions established pursuant to section 184 of the CAA. Section 184(a) of the CAA established by law the current Ozone Transport Region (OTR) comprised of 12 eastern states, including Pennsylvania. This requirement is referred to as OTR RACT. As noted previously, a "major source" is defined based on the source's potential to emit (PTE) of NO_x, VOC, or both pollutants, and the applicable thresholds differ based on the classification of the nonattainment area in which the source is located. See sections 182(c)-(f) and 302 of the CAA.

Since the 1970's, EPA has consistently defined "RACT" as the lowest emission limit that a particular source is capable of meeting by the application of the control technology

² A "major source" is defined based on the source's potential to emit (PTE) of NO_x or VOC, and the applicable thresholds for RACT differs based on the classification of the nonattainment area in which the source is located. See sections 182(c)-(f) and 302 of the CAA.

that is reasonably available considering technological and economic feasibility.³

EPA has provided more substantive RACT requirements through implementation rules for each ozone NAAQS as well as through guidance. In 2004 and 2005, EPA promulgated an implementation rule for the 1997 8-hour ozone NAAQS in two phases ("Phase 1 of the 1997 Ozone Implementation Rule" and "Phase 2 of the 1997 Ozone Implementation Rule"). 69 FR 23951 (April 30, 2004) and 70 FR 71612 (November 29, 2005), respectively. Particularly, the Phase 2 Ozone Implementation Rule addressed RACT statutory requirements under the 1997 8-hour ozone NAAQS. See 70 FR 71652 (November 29, 2005).

On March 6, 2015, EPA issued its final rule for implementing the 2008 8-hour ozone NAAQS ("the 2008 Ozone SIP Requirements Rule"). 80 FR 12264. At the same time, EPA revoked the 1997 8-hour ozone NAAQS, effective on April 6, 2015.⁴ The 2008 Ozone SIP Requirements Rule provided comprehensive requirements to transition from the revoked 1997 8-hour ozone NAAQS to the 2008 8-hour ozone NAAQS, as codified in 40 CFR part 51, subpart AA, following revocation. Consistent with previous policy, EPA determined that areas designated nonattainment for both the 1997 and 2008 8-hour ozone NAAQS at the time of revocation, must retain implementation of certain nonattainment area requirements (*i.e.*, anti-backsliding requirements) for the 1997 8-hour ozone NAAQS as specified under section 182 of the CAA, including RACT. See 40 CFR 51.1100(o). An area remains subject to the anti-backsliding requirements for a revoked NAAQS until EPA approves a redesignation to attainment for the area for the 2008 8-hour ozone NAAQS. There are no effects on applicable requirements for areas within the OTR, as a result of the revocation of the 1997 8-hour ozone NAAQS. Thus, Pennsylvania, as a state

³ See December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, "Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas," and also 44 FR 53762 (September 17, 1979).

⁴ On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir. Court) issued an opinion on the 2008 Ozone SIP Requirements Rule. *South Coast Air Quality Mgmt. Dist. v. EPA*, 882 F.3d 1138 (D.C. Cir. 2018). The D.C. Cir. Court found certain parts reasonable and denied the petition for appeal on those. In particular, the D.C. Cir. Court upheld the use of NO_x averaging to meet RACT requirements for 2008 8-hour ozone NAAQS. However, the Court also found certain other provisions unreasonable. The D.C. Cir. Court vacated the provisions it found unreasonable.

¹ Within the material submitted by PADEP, this company is sometimes referred to as Hydro Carbide Inc.

within the OTR, remains subject to RACT requirements for both the 1997 8-hour ozone NAAQS and the 2008 8-hour ozone NAAQS.

In addressing RACT, the 2008 Ozone SIP Requirements Rule is consistent with existing policy and Phase 2 of the 1997 Ozone Implementation Rule. In the 2008 Ozone SIP Requirements Rule, EPA requires RACT measures to be implemented by January 1, 2017 for areas classified as moderate nonattainment or above and all areas of the OTR. EPA also provided in the 2008 Ozone SIP Requirements Rule that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations stating that there are no sources in the nonattainment area covered by a specific control technique guidelines (CTG) source category. In the preamble to the 2008 Ozone SIP Requirements Rule, EPA clarified that states must provide notice and opportunity for public comment on their RACT SIP submissions, even when submitting a certification that the existing provisions remain RACT or a negative declaration. States must submit appropriate supporting information for their RACT submissions, in accordance with the Phase 2 of the 1997 Ozone Implementation Rule. Adequate documentation must support that states have considered control technology that is economically and technologically feasible in determining RACT, based on information that is current as of the time of development of the RACT SIP.

In addition, in the 2008 Ozone SIP Requirements Rule, EPA clarified that states can use weighted average NO_x emissions rates from sources in the nonattainment area for meeting the major NO_x RACT requirement under the CAA, as consistent with existing policy.⁵ EPA also recognized that states may conclude in some cases that sources already addressed by RACT determinations for the 1979 1-hour and/or 1997 8-hour ozone NAAQS may not need to implement additional controls to meet the 2008 8-hour ozone NAAQS

RACT requirement. See 80 FR 12278 and 12279 (March 6, 2015).

C. Applicability of RACT Requirements in Pennsylvania

As indicated earlier, RACT requirements apply to any ozone nonattainment areas classified as moderate or higher (serious, severe or extreme) under CAA sections 182(b)(2) and 182(f). Pennsylvania has outstanding ozone RACT requirements for both the 1997 and 2008 8-hour ozone NAAQS. The entire Commonwealth of Pennsylvania is part of the OTR established under section 184 of the CAA and thus is subject statewide to the RACT requirements of CAA sections 182(b)(2) and 182(f), pursuant to section 184(b).

At the time of revocation of the 1997 8-hour ozone NAAQS (80 FR 12264, March 6, 2015 (effective April 6, 2015)), only two moderate nonattainment areas remained in the Commonwealth of Pennsylvania for this standard, the Philadelphia and the Pittsburgh Areas. As required under EPA's anti-backsliding provisions, these two moderate nonattainment areas continue to be subject to RACT under the 1997 8-hour ozone NAAQS. Given its location in the OTR, the remainder of the Commonwealth is also treated as moderate nonattainment area under the 1997 8-hour ozone NAAQS for any planning requirements under the revoked standard, including RACT. The OTR RACT requirement is also in effect under the 2008 8-hour ozone NAAQS throughout the Commonwealth, since EPA did not designate any nonattainment areas above marginal for this standard in Pennsylvania. Thus, in practice, the same RACT requirements continue to be applicable in Pennsylvania for both the 1997 and 2008 8-hour ozone NAAQS. RACT must be evaluated and satisfied as separate requirements under each applicable standard.

RACT applies to major sources of NO_x and VOC under each ozone NAAQS or any VOC sources subject to CTG RACT. Which NO_x and VOC sources in Pennsylvania are considered "major" and are therefore subject to RACT is dependent on the location of each source within the Commonwealth. Sources located in nonattainment areas would be subject to the "major source" definitions established under the CAA based on the area's current classification(s). In the case of Pennsylvania, sources located outside of moderate or above ozone nonattainment areas, as part of the OTR, shall be treated as if these areas were moderate.

In Pennsylvania, the SIP program is implemented primarily by the PADEP, but also by local air agencies in Philadelphia County (the City of Philadelphia's Air Management Services [AMS]) and Allegheny County, (the Allegheny County Health Department [ACHD]). These agencies have implemented numerous RACT regulations and source-specific measures in Pennsylvania to meet the applicable ozone RACT requirements. Historically, statewide RACT controls have been promulgated by PADEP in Pennsylvania Code Title 25—Environmental Resources, Part I—Department of Environmental Protection, Subpart C—Protection of Natural Resources, Article III—Air Resources, (25 Pa. Code) Chapter 129. AMS and ACHD have incorporated by reference Pennsylvania regulations, but have also promulgated regulations adopting RACT controls for their own jurisdictions. In addition, AMS and ACHD have submitted, through PADEP, separate source-specific RACT determinations as SIP revisions for sources within their respective jurisdictions, which have been approved by EPA. See 40 CFR 52.2020(d)(1).

States were required to make RACT SIP submissions for the 1997 8-hour ozone NAAQS by September 15, 2006. PADEP submitted a SIP revision on September 25, 2006, certifying that a number of previously approved VOC RACT rules continued to satisfy RACT under the 1997 8-hour ozone NAAQS for the remainder of Pennsylvania.⁶ PADEP has met its obligations under the 1997 8-hour ozone NAAQS for its CTG and non-CTG VOC sources. See 82 FR 31464 (July 7, 2017). RACT control measures addressing all applicable CAA RACT requirements under the 1997 8-hour ozone NAAQS have been implemented and fully approved in the jurisdictions of ACHD and AMS. See 78 FR 34584 (June 10, 2013) and 81 FR 69687 (October 7, 2016). For the 2008 8-hour ozone NAAQS, states were required to submit RACT SIP revisions by July 20, 2014. On May 16, 2016, PADEP submitted a SIP revision addressing RACT for both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. Specifically, the May 16, 2016 SIP submittal intended to satisfy sections 182(b)(2)(C), 182(f), and 184 of the CAA for both the 1997 and 2008 8-hour ozone NAAQS for Pennsylvania's major NO_x and VOC non-CTG sources,

⁵ EPA's NO_x RACT guidance "Nitrogen Oxides Supplement to the General Preamble" (57 FR 55620; November 25, 1992) encouraged states to develop RACT programs that are based on "area wide average emission rates." Additional guidance on area-wide RACT provisions is provided by EPA's January 2001 economic incentive program guidance titled "Improving Air Quality with Economic Incentive Programs," available at <https://www.epa.gov/sites/production/files/2015-07/documents/eipfin.pdf>. In addition, as mentioned previously, the D.C. Cir. Court upheld the use of NO_x averaging to meet RACT requirements for 2008 8-hour ozone NAAQS. *South Coast Air Quality Mgmt. Dist. v. EPA*, 882 F. 3d (D.C. Cir. 2018).

⁶ The September 15, 2006 SIP submittal initially included Pennsylvania's certification of NO_x RACT regulations; however, NO_x RACT portions were withdrawn by PADEP on June 27, 2016.

except ethylene production plants, surface active agents manufacturing, and mobile equipment repair and refinishing.⁷

D. EPA's Conditional Approval for Pennsylvania's RACT Requirements Under the 1997 and 2008 8-Hour Ozone NAAQS

On May 16, 2016, PADEP submitted a SIP revision addressing RACT for both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. PADEP's May 16, 2016 SIP revision intended to address certain outstanding VOC CTG RACT and major NO_x RACT requirements under the CAA for both standards. The SIP revision requested approval of Pennsylvania's 25 Pa. Code 129.96–100, *Additional RACT Requirements for Major Sources of NO_x and VOCs* (the “presumptive” RACT II rule). Prior to the adoption of the RACT II rule, Pennsylvania relied on the NO_x and VOC control measures in 25 Pa. Code 129.92–95, *Stationary Sources of NO_x and VOCs*, (the RACT I rule) to meet RACT for major sources of VOC and NO_x. The requirements of the RACT I rule remain in effect and continue to be implemented as RACT.⁸ On September 26, 2017, PADEP submitted a supplemental SIP revision which committed to address various deficiencies identified by EPA in PADEP's May 16, 2016 “presumptive” RACT II rule SIP revision.

On May 9, 2019, EPA conditionally approved the RACT II rule based on PADEP's September 26, 2017 commitment letter.⁹ See 84 FR 20274. In EPA's final conditional approval, EPA noted that PADEP would be required to submit, for EPA's approval, SIP revisions to address any facility-wide or system-wide averaging plan approved under 25 Pa. Code 129.98 and any case-by-case RACT determinations under 25 Pa. Code 129.99. PADEP committed to submitting these additional SIP revisions within 12 months of EPA's final conditional approval, specifically May 9, 2020.

⁷ EPA's conditional approval of PADEP's May 16, 2016 SIP revision covered relevant sources located in both Philadelphia and Allegheny County, Pennsylvania.

⁸ These requirements were initially approved as RACT for Pennsylvania under the 1979 1-hour ozone NAAQS. The RACT I Rule was approved by EPA into the SIP on March 23, 1998. 63 FR 13789.

⁹ On August 27, 2020, the Third Circuit Court of Appeals issued a decision vacating EPA's approval of three provisions of Pennsylvania's presumptive RACT II rule applicable to certain coal-fired power plants. *Sierra Club v. EPA*, 972 F. 3d 290 (3d Cir. 2020). None of the sources in this proposed rulemaking are subject to the three presumptive RACT II provisions at issue in that *Sierra Club* decision.

Therefore, as authorized in CAA section 110(k)(3) and (k)(4), Pennsylvania was required to submit the following as case-by-case SIP revisions, by May 9, 2020, for EPA's approval as a condition of approval of 25 Pa. Code 128 and 129 in the May 16, 2016 SIP revision: (1) All facility-wide or system-wide averaging plans approved by PADEP under 25 Pa. Code 129.98 including, but not limited to, any terms and conditions that ensure the enforceability of the averaging plan as a practical matter (*i.e.*, any monitoring, reporting, recordkeeping, or testing requirements); and (2) all source-specific RACT determinations approved by PADEP under 25 Pa. Code 129.99, including any alternative compliance schedules approved under 25 Pa. Code 129.97(k) and 129.99(i); the case-by-case RACT determinations submitted to EPA for approval into the SIP should include any terms and conditions that ensure the enforceability of the case-by-case or source-specific RACT emission limitation as a practical matter (*i.e.*, any monitoring, reporting, recordkeeping, or testing requirements). See May 9, 2019 (84 FR 20274). Through multiple submissions between 2017 and 2020, PADEP has submitted to EPA for approval various SIP submissions to implement its RACT II case-by-case determinations and averaging plans. This proposed rulemaking is based on EPA's review of one of these SIP revisions.

II. Summary of SIP Revisions

In order to satisfy a requirement from EPA's May 9, 2019 conditional approval, PADEP has submitted to EPA, SIP revisions addressing case-by-case RACT requirements for major sources in Pennsylvania subject to 25 Pa. Code 129.99. On May 7, 2020, PADEP submitted to EPA, a SIP revision pertaining to Pennsylvania's case-by-case VOC RACT determinations for sources located at Hydro Carbide, a major VOC emitting facility located in the Commonwealth. PADEP provided documentation in its SIP revision to support its case-by-case RACT determinations for affected emission units subject to 25 Pa. Code 129.99 at Hydro Carbide. The facility was previously subject to RACT I under the 1979 1-hour ozone standard.

In the Pennsylvania RACT SIP revision, PADEP included case-by-case RACT determinations for the existing emissions units at Hydro Carbide that required a source specific VOC RACT determination. In PADEP's RACT determinations an evaluation was completed to determine if previously SIP-approved, case-by-case RACT

requirements (herein referred to as RACT I) were more stringent and required to be retained in the facility's Title V air quality permit and subsequently, the Federally-approved SIP, or if the new case-by-case RACT requirements are more stringent and supersede the previous Federally-approved provisions.

The case-by-case RACT determinations submitted by PADEP consist of an evaluation of all reasonably available controls at the time of evaluation for each affected emissions unit, resulting in a PADEP determination of what specific control requirements, if any, satisfy RACT for that particular unit. The adoption of new or additional controls or the revisions to existing controls as RACT were specified as requirements in new or revised Federally enforceable permits (hereafter RACT II permits) issued by PADEP to the facility. The RACT II permits, which revise or adopt additional source-specific controls, have been submitted as part of the Pennsylvania RACT SIP revisions for EPA's approval in the Pennsylvania SIP under 40 CFR 52.2020(d)(1). The RACT II permit submitted by PADEP for Hydro Carbide is permit number 65–00860, effective November 15, 2019, and is part of the docket for this rulemaking, which is available online at <https://www.regulations.gov>, Docket No. EPA–R03–OAR–2022–0284.¹⁰ EPA is proposing to incorporate by reference in the Pennsylvania SIP, via the RACT II permit, source-specific RACT determinations under the 1997 and 2008 8-hour ozone NAAQS for certain VOC sources at Hydro Carbide.¹¹

III. EPA's Evaluation of SIP Revisions

After thorough review and evaluation of the information provided by PADEP for Hydro Carbide included in its SIP revision submittal, EPA finds that PADEP's case-by-case RACT determinations and conclusions provided are reasonable and appropriately considered technically and economically feasible controls, while setting lowest achievable limits. EPA finds that the proposed source-specific RACT controls for the sources subject to this rulemaking action adequately meet the CAA RACT requirements for the 1997 and 2008 8-

¹⁰ The RACT II permit is a redacted version of the facility's Federally enforceable permits and reflect the specific RACT requirements being approved into the Pennsylvania SIP.

¹¹ While the prior SIP-approved RACT I permit will remain part of the SIP, this RACT II rule will incorporate by reference the RACT II requirements through the RACT II permit and clarify the ongoing applicability of specific conditions in the RACT I permit.

hour ozone NAAQS for the subject sources of VOC in Pennsylvania, as they are not covered by or cannot meet Pennsylvania's presumptive RACT regulation.

EPA also finds that all the proposed revisions to previously SIP approved RACT requirements, under the 1979 1-hour ozone standard (RACT I), as discussed in PADEP's SIP revisions, will result in equivalent or additional reductions of NO_x and/or VOC emissions and should not interfere with any applicable requirement concerning attainment or reasonable further progress with the NAAQS or interfere with other applicable CAA requirement in section 110(l) of the CAA.

EPA's complete analysis of PADEP's case-by-case RACT SIP revision for Hydro Carbide is included in the TSD available in the docket for this rulemaking action and available online at <https://www.regulations.gov>, Docket number EPA-R03-OAR-2022-0284.

IV. Proposed Action

Based on EPA's review, EPA is proposing to approve the Pennsylvania SIP revision for case-by-case RACT determinations for individual sources at Hydro Carbide and incorporate by reference in the Pennsylvania SIP, via the RACT II permit, source specific RACT determinations under the 1997 and 2008 8-hour ozone NAAQS for those sources. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference source specific RACT determinations via the RACT II permit as described in Sections II and III—Summary of SIP Revisions and EPA's Evaluation of SIP Revisions in this document. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions,

EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking, addressing the NO_x and VOC RACT case-by-case requirements for individual sources at Hydro Carbide for the 1997 and 2008 8-hour ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in Pennsylvania, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 29, 2022.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2022-07219 Filed 4-5-22; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2022-0196; FRL-9701-01-R3]

Approval and Promulgation of Air Quality Implementation Plans;

Delaware; Removal of Stage II Gasoline Vapor Recovery Program Requirements and Revision of Stage I Gasoline Vapor Recovery Program Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision, made in two separate submittals, by the State of Delaware. This revision removes requirements for gasoline vapor recovery systems installed on gasoline dispensers, the purpose of which are to capture emissions from vehicle refueling operations, otherwise known as Stage II vapor recovery. This revision also strengthens Delaware's requirements for gasoline vapor recovery systems that capture emissions from storage tank refueling operations, otherwise known as Stage I vapor recovery. Specifically, this action would remove from the approved SIP prior-approved Stage II requirements applicable to new and existing gasoline dispensing facilities (GDFs). New and existing GDF's will be required to decommission their Stage II vapor recovery systems (VRS) and to install, maintain, and periodically test Stage I enhanced vapor recovery systems (EVRS). Delaware's SIP revision establishes a compliance schedule for these changes and includes a demonstration that removal of Stage II requirements is consistent with the Clean Air Act (CAA) and meets all relevant EPA guidance.

DATES: Written comments must be received on or before May 6, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2022–0196 at <https://www.regulations.gov>, or via email to gordon.mike@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Adam Yarina, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2103. Mr. Yarina can also be reached via electronic mail at Yarina.Adam@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we refer to EPA. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Summary of Delaware’s Stage I and Stage II Vapor Recovery Program and SIP Revisions
- III. EPA’s Evaluation of Delaware’s SIP Revisions
- IV. Proposed Action
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

I. Background and Purpose

On November 17, 2020, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to its SIP. This SIP submittal includes Delaware’s revised Stage I and Stage II vapor recovery regulations at 7 DE Admin Code 1124

Section 26.0 *Gasoline Dispensing Facility Stage I Vapor Recovery* and Section 36.0 *Vapor Emission Control at Gasoline Dispensing Facilities*, respectively. These regulations have been revised to require the decommissioning of existing Stage II VRS and the installation, maintenance, and testing of Stage I EVRS at new and existing GDFs. The SIP submittal establishes a compliance schedule for these changes and includes a demonstration that removal of Stage II VRS in Delaware will not interfere with any requirement concerning attainment or reasonable progress of any national ambient air quality standard (NAAQS), or any other applicable requirement of the CAA. All existing GDFs in Delaware were to decommission their Stage II VRS by December 31, 2021, and install Stage I EVRS by December 31, 2025. New GDFs are prohibited from installing Stage II VRS and must install Stage I EVRS at construction. Delaware’s SIP demonstration is also intended to show that removal of Stage II requirements is consistent with all relevant EPA guidance.

Stage II vapor recovery is an emission control system that is installed on gasoline dispensing equipment at GDFs for the purpose of capturing fuel vapor that would otherwise be released from vehicle gas tanks into the atmosphere during vehicle refueling. Stage II VRS installed on dispensing equipment capture these refueling emissions at the dispenser and route the refueling vapors back to the GDF’s underground storage tank, preventing volatile organic compounds (VOCs) that comprise these vapors from escaping to the atmosphere. Beginning in 1998, newly manufactured gasoline-burning cars and trucks have been equipped with on-board vapor recovery (ORVR) systems that utilize carbon canisters installed directly on the vehicle to capture refueling vapors in the vehicle to be later routed to the vehicle’s engine for combustion during engine operation.

Stage I VRS are systems that capture vapors displaced from storage tanks at GDFs during gasoline tank truck deliveries. When gasoline is delivered into an aboveground or underground storage tank, vapors that were taking up space in the storage tank are displaced by the gasoline entering the storage tank. Stage I VRS route these displaced vapors into the delivery truck’s tank. Some vapors are vented when the storage tank exceeds a specified pressure threshold, however Stage I VRS greatly reduce the possibility of these displaced vapors being released into the atmosphere.

The 1990 CAA amendments initially required implementation of both Stage II VRS and ORVR systems. Section 182(b)(3) of the CAA required areas classified as moderate and above ozone nonattainment to implement Stage II vapor recovery programs, while CAA section 184(b)(2) required states in the Northeast Ozone Transport Region (OTR) to implement Stage II vapor recovery or comparable measures. CAA section 202(a)(6) required EPA to promulgate regulations for ORVR for light-duty cars and trucks (passenger vehicles); EPA adopted these requirements in a final action published in the April 6, 1994 **Federal Register** (59 FR 16262, hereafter referred to as the ORVR rule). Upon the effective date of that final rule, moderate ozone nonattainment areas were no longer subject to CAA section 182(b)(3) Stage II vapor recovery requirements. Under the ORVR rule, new passenger cars built in model year 1998 and later were required to be equipped with ORVR systems, followed by model year 2001 and later light-duty trucks. ORVR equipment has been installed on nearly all new gasoline-powered light-duty cars, light-duty trucks, and heavy-duty vehicles manufactured since 2006.¹

During the phase-in of ORVR controls, Stage II has provided VOC emission reductions in ozone nonattainment areas and in certain areas of the OTR. Congress recognized that ORVR systems and Stage II VRS would over time become largely redundant technologies acting to capture the same pollutants; Congress therefore provided authority in the 1990 CAA amendments for EPA to allow states to remove Stage II vapor recovery programs from their SIPs upon EPA making a finding that ORVR is in “widespread use.”² EPA issued a widespread use finding in a final rule published in the May 16, 2012 **Federal Register** (77 FR 28772), in which EPA determined that ORVR was in widespread use on a nationwide basis. EPA estimated that by the end of 2016, more than 88 percent of gasoline refueling nationwide would occur with ORVR-equipped vehicles.³ Thus, Stage II vapor recovery programs have become largely redundant control systems for ORVR-equipped vehicles and, as a result, Stage II VRS achieve ever-declining emissions benefits as more

¹ EPA Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures, Table A–1 (August 7, 2012).

² See CAA Section 202(a)(6)

³ EPA Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures, Table A–1 (August 7, 2012).

ORVR-equipped vehicles continue to enter the on-road motor vehicle fleet.⁴ In areas where certain types of vacuum-assist Stage II VRS are used, such as Delaware, the incompatibility between ORVR systems and certain configurations of Stage II vapor recovery systems results in the reduction of overall control system efficiency in capturing VOC refueling emissions, compared to what would otherwise be achieved by ORVR or Stage II VRS acting in the absence of the other. In its May 16, 2012 widespread use rulemaking, EPA also exercised its authority under CAA section 202(a)(6) to waive certain federal statutory requirements for Stage II VRS at GDFs, which among other things, exempted all new ozone nonattainment areas classified serious or above from the requirement to adopt Stage II vapor recovery programs. Finally, EPA's May 16, 2012 rulemaking also noted that any state currently implementing Stage II vapor recovery program may submit SIP revisions that would allow for the phase-out of Stage II VRS.

Stage I VRS have been in place since the 1970s. EPA has issued the following guidance regarding Stage I systems: "Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations" (November 1975, EPA Online Publication 450R75102), which is regarded as the control techniques guideline (CTG) for the control of VOC emissions from this source category; and the EPA document "Model Volatile Organic Compound Rules for Reasonably Available Control Technology" (Staff Working Draft, June 1992) contains a model Stage I regulation. In more recent years, the California Air Resources Board (CARB) has required Stage I VRS capable of achieving vapor control efficiencies higher than those achieved by traditional systems. These systems are commonly referred to as Stage I EVRS.

II. Summary of Delaware's Stage I and Stage II Vapor Recovery Program and SIP Revisions

Since the early 1990s, ambient air quality in Delaware—in particular that of New Castle County, which is Delaware's portion of the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD metropolitan area—has been in nonattainment for the ground-level ozone NAAQS. New Castle County and Kent County were both classified as Severe-15 nonattainment for the 1-hour

⁴ EPA Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures, p.1 (August 7, 2012).

1979 ozone NAAQS, while Sussex County was classified as Marginal nonattainment. See 56 FR 56694. Because gasoline vapors contain mainly VOCs and contribute to the formation of ground-level ozone, Section 182(b)(3) of the CAA Amendments of 1990 requires states with moderate and higher ozone nonattainment areas to revise their SIPs to require "owners or operators of gasoline dispensing systems to install and operate . . . a system for gasoline vapor recovery of emissions from the fueling of motor vehicles."⁵ As a result, in 1993 Delaware adopted Stage I and Stage II vapor recovery requirements at 7 DE Admin Code 1124, Section 26.0 *Gasoline Dispensing Stage I Vapor Recovery*, and Section 36.0 *Stage II Vapor Recovery*,⁶ respectively. These changes were subsequently incorporated into Delaware's SIP; see the **Federal Register** notice from June 10, 1994 at 59 FR 29956, and May 3, 1995 at 60 FR 21707.⁷

In September 2015, due to the widespread use of ORVR and its incompatibility with the Stage II vacuum-assist VRS in use at Delaware GDFs, Delaware revised its vapor recovery regulations to allow existing GDFs the option to decommission their Stage II VRS, and for new GDFs to forgo them entirely, provided that GDFs installed, maintained, and periodically tested Stage I EVRS.⁸ These revisions, referred to by Delaware as the "2015 Stage II Regulation," were interim updates that were intended to test the feasibility and effectiveness of this approach, and were not incorporated into Delaware's SIP at that time. Delaware subsequently revised and finalized these requirements in 2019 and 2020. The finalized revisions, referred to by Delaware as the "2019 Stage II Revision," mandated that existing GDFs decommission their Stage II VRS by December 31, 2021, and prohibited new GDFs from installing them at all. At the same time, Delaware also updated and finalized changes to the 2002 version of 7 DE Admin. Code 1124, Section 26.0, *Gasoline Dispensing*

⁵ CAA Section 182(b)(3).

⁶ The title of this section was subsequently revised by Delaware to "Vapor Emission Control at Gasoline Dispensing Facilities," as discussed later in this rule.

⁷ Although these SIP revisions were approved by EPA on different dates, the Delaware state effective date for these requirements was January 11, 1993. The **Federal Register** document published on December 7, 1998 at 63 FR 67407 has a comprehensive list of approved Delaware SIP revisions as of that date.

⁸ 19 DE Reg. 199, 7 DE Admin. Code 1124 *Control of Volatile Organic Compound Emissions*; issued August 17, 2015 via Secretary's Order No. 2015-A-0030, effective September 11, 2015.

Facility Stage I Recovery. These updated requirements mandated that existing GDFs install Stage I EVRS by December 31, 2025, while new GDFs were required to install them upon construction.⁹

On November 17, 2020, Delaware submitted a SIP revision to EPA consisting of these state regulatory requirements adopted by DNREC, along with a demonstration of the emission impacts of the changes to Stage I and Stage II requirements on affected Delaware areas. This SIP revision, referred to by Delaware as the "DE 2019 Stage I–II SIP Revision" includes revised rules that mandated the decommissioning of Stage II VRS at existing GDFs by December 31, 2021, prohibit the installation of Stage II VRS at new GDFs, and mandate the installation of Stage I EVRS at existing GDFs by December 31, 2025, and at new GDFs upon construction. Delaware's revised rules incorporate by reference requirements and procedures for decommissioning Stage II VRS based on Chapter 14 of the Petroleum Equipment Institute's "Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites," 2019 edition, PEI/RP300–19. The revised rules also incorporate by reference requirements and procedures for the design, installation, maintenance, and periodic testing of Stage I EVRS, and for the maintenance and periodic testing of Stage II VRS for GDFs that opt to continue operating them until the decommission deadline.¹⁰

Delaware's November 17, 2020 SIP revision also includes a demonstration supporting the discontinuation of the Delaware Stage II vapor recovery program. This demonstration, discussed in greater detail below, consists of an analysis that after the year 2016, the overall emissions benefits associated with the Stage II program, operated in conjunction with ORVR, are overwhelmed by an emissions disbenefit caused by ORVR incompatibility with the vacuum-assist type Stage II VRS equipment in use at Delaware GDFs. DNREC's analysis shows that continued operation of the

⁹ 24 DE Reg. 61, 7 DE Admin. Code 1124 *Control of Volatile Organic Compound Emissions*, Section 26—*Gasoline Dispensing Facility Stage I Vapor Recovery*, and Section 36—*Vapor Emission Control at Gasoline Dispensing Facilities*; issued June 11, 2020 via Secretary's Order No.: 2020-A-0017, effective July 11, 2020.

¹⁰ See 24 DE Reg. 61, 7 DE Admin. Code 1124, *Control of Volatile Organic Compound Emissions*, Section 36.4 *Standards for Facilities with Stage I Vapor Recovery Systems*, and Section 36.3 *Standards for Facilities with Stage II Vapor Recovery Systems*, respectively.

Stage II vapor recovery program beyond 2016 actually increases VOC emissions due to the incompatibility between the vacuum-assist type Stage II VRS equipment in use at Delaware GDFs and ORVR, coupled with the increasing prevalence of ORVR-equipped vehicles. Delaware further demonstrates that mandating the decommissioning of all Stage II VRS equipment by December 31, 2021, will result in additional emissions benefits, especially when combined with Stage I EVRS and the increasing prevalence of ORVR-equipped vehicles.

On July 14, 2021, Delaware submitted an additional SIP revision to further amend 7 DE Admin. Code 1124, *Control of Volatile Organic Compound Emissions*, Section 36.0 *Vapor Emission Control at Gasoline Dispensing Facilities*. These amendments update references to several CARB Executive Orders (EOs) previously incorporated by reference into 7 DE Admin. Code 1124, which were subsequently modified by CARB between July 17, 2019 and June 3, 2020, after Delaware’s 2020 amendments to 7 DE Admin. Code 1124. The modified CARB EOs extend expiration dates and specify additional parts to be used in some certified Stage I EVRS.¹¹ The 2020 SIP submittal and

2021 SIP submittal will both be considered in this rulemaking.

III. EPA’s Evaluation of Delaware’s SIP Revisions

EPA has reviewed Delaware’s revised 7 DE Admin. Code 1124, *Control of Volatile Organic Compound Emissions*, and accompanying SIP narrative, and has concluded that Delaware’s November 17, 2020 and July 14, 2021 SIP revisions are consistent with EPA’s widespread use rule (77 FR 28772, May 16, 2012) and with EPA’s “Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plan and Assessing Comparable Measures” (EPA-457/B-12-001; August 7, 2012), hereafter referred to as EPA’s Stage II Removal Guidance.

Delaware’s November 17, 2020 revision includes a demonstration supporting the discontinuation of the Delaware Stage II vapor recovery program, in compliance with the requirements of the CAA sections 110(l) requirement that revision of the SIP will not interfere with attainment of or reasonable further progress towards attainment of any NAAQS or any other applicable CAA requirement. This demonstration was prepared by DNREC based on relevant equations provided in

EPA’s Stage II Removal Guidance. From this analysis, Delaware determined that by 2017 the emissions benefits from the Stage II vapor recovery program, in conjunction with ORVR will be overwhelmed by the emission disbenefits stemming from an incompatibility between Stage II vacuum-assist type VRS equipment and ORVR. Beyond 2016, the continuation of Stage II vapor recovery requirements would increase emissions in Delaware, as summarized in Table 1 in this document. If not removed, the vacuum-assist Stage II systems in Delaware would lead to an emission increase of 30.87 tons in the ozone season¹² and 71.13 tons annually by 2021. As a result, Delaware elected to allow decommissioning of Stage II VRS beginning in September 2015 and to mandate decommissioning of Stage II VRS by December 31, 2021. Implementation of these requirements are estimated to reduce emissions resulting from the incompatibility of Stage II VRS and ORVR to 7.59 tons during the 2021 ozone season and 17.48 tons for all of 2021. The EPA has reviewed Delaware’s work and finds that its underlying data, methods, and resulting conclusions are consistent with all relevant EPA guidance for Stage II vapor recovery requirements.

TABLE 1—ESTIMATES OF DELAWARE VOC EMISSIONS BENEFITS FROM STAGE II VAPOR RECOVERY EQUIPMENT

Year	Tons* (ozone season)	Tons* (annual)
2016	3.74	8.625
2017	-4.96	-11.43
2018	-13.08	-30.14
2019	-19.78	-45.58
2020	-25.55	-58.86
2021	-30.87	-71.13
2022	-35.75	-82.37
2023	-40.17	-92.55
2024	-44.12	-101.65
2025	-47.59	-109.64
2026	-51.10	-117.74

* Negative numbers indicate emissions increases instead of emissions reductions.

In evaluating whether a given SIP revision would interfere with attainment of a NAAQS, EPA generally considers whether the SIP revision will allow for an increase in actual emission into the air over what is allowed under the existing EPA-approved SIP. EPA has not required that states produce a new complete attainment demonstration for

every SIP revision, provided that the status quo air quality is preserved.¹³ EPA believes that a planned Stage II decommissioning that is shown not to result in an increase in areawide VOC emissions is consistent with the conditions of CAA section 110(l), and would not jeopardize attainment or maintenance of an area that formerly

relied upon Stage II emission reductions in the approved SIP. Delaware has demonstrated that Stage II vapor recovery will no longer provide emission reductions when compared to ORVR without Stage II vapor recovery. Stage II vapor recovery operated in conjunction with ORVR has been shown by Delaware to result in increased VOC

¹¹ 24 DE Reg. 944, 7 DE Admin. Code 1124, *Control of Volatile Organic Compound Emissions*, Section 36.0, *Vapor Emission Control at Gasoline Dispensing Facilities*, specifically Section 36.5 *Requirements for Stage I Facilities with Continuous Pressure Monitoring Systems*, 36.10 *Approved*

Systems, and Section 36.11 *Referenced Standards*; issued March 11, 2021 via Secretary’s Order No.: 2021-A-0009, effective April 11, 2021.

¹² The ozone season is the five-month period from May 1 to September 30 in the calendar year.

¹³ EPA Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures, Section 2.2 (August 7, 2012).

emissions since 2017, due to incompatibilities between certain types of Stage II VRS equipment and vehicle ORVR systems. Therefore, EPA believes discontinuance of Stage II in Delaware will not interfere with the state's ability to attain or maintain the NAAQS, or to provide reasonable further progress in meeting the NAAQS.

States in the OTR defined by the CAA remain obligated under CAA section 184(b)(2) to implement either a statewide Stage II vapor recovery program or other measures capable of achieving emission reductions "comparable to those achievable" by Stage II vapor recovery. EPA issued guidance on this OTR comparability demonstration in 1995 and later updated that guidance as part of its August 2012 Stage II Removal Guidance.

Delaware is required to demonstrate Stage II comparability for areas where Stage II vapor recovery was previously mandated by CAA section 182(b)(3) prior to EPA's issuance of its ORVR "widespread use" determination; for Delaware, this applies statewide (*i.e.*, for New Castle, Kent, and Sussex counties). The 110(l) demonstration in Delaware's November 17, 2020, SIP revision shows that Stage II no longer yields VOC emissions benefits in these areas after 2016 when operated in conjunction with ORVR, and in fact results in emissions increases. Therefore, since Stage II provides no additional benefits beyond ORVR, and results in increases in VOC emissions after 2016, EPA believes that removal of Stage II satisfies the Stage II comparability requirement of section 184 for these areas.

In addition to the CAA section 182 and 184 requirements applicable to Stage II vapor recovery, CAA section 193 prohibits modification of any control requirement in effect before enactment of the CAA of 1990 (*i.e.*, November 15, 1990) in a current nonattainment area—unless modification "ensures equivalent or greater emission reductions." Therefore, a Stage II vapor recovery control program implemented under a SIP prior to November 1990 may not be removed from the SIP until another requirement is shown to achieve equal or greater emissions reductions than Stage II vapor recovery. Delaware did not have a Stage II program prior to November 15, 1990, so Stage II was not a part of the Delaware SIP prior to that date. Therefore, this "general savings clause" requirement of CAA section 193 does not apply to Delaware or to this action.

With respect to Stage I vapor recovery requirements, Delaware's revised regulations in 7 DE Admin. Code 1124, Sections 26.0 and 36.0 are more

stringent than the previously approved version of the rule,¹⁴ thus meeting the CAA section 110(l) anti-back sliding requirements. As noted above, the revised rule requires existing GDFs to install CARB-approved Stage I EVRS by December 31, 2025, while new GDFs are required to install them upon construction. CARB-approved Stage I EVRS have been certified to achieve a 98 percent reduction in VOC emissions, compared to 95 percent for non-EVRS Stage I systems. Thus, when non-EVRS Stage I systems in Delaware are replaced with CARB-approved Stage I EVRS, greater emission reductions will be achieved.

IV. Proposed Action

EPA is proposing to approve Delaware's November 17, 2020, and July 14, 2021 SIP revisions for statewide removal of Stage II vapor recovery requirements, statewide prohibition of Stage II VRS installation at new GDFs, the statewide mandatory decommissioning of Stage II VRS at existing GDFs by December 31, 2021, and the statewide mandatory installation of Stage I EVRS at all GDFs by December 31, 2025. Specifically, EPA is proposing to approve Delaware's revised 7 DE Admin. Code 1124, *Control of Volatile Organic Compound Emissions*, and incorporate it into the Delaware SIP. EPA is proposing to approve this SIP revision because it meets all applicable requirements of the Clean Air Act and relevant EPA guidance and because approval of this SIP revision will not interfere with attainment or maintenance of the ozone NAAQS.

EPA is soliciting public comments on the issues discussed in this notice or other relevant matters. These comments will be considered before taking final action.

V. Incorporation by Reference

In this document, EPA proposes to include, in our subsequent final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the State of Delaware's revised 7 DE Admin Code 1124 Section 26.0 *Gasoline Dispensing Facility Stage I Vapor Recovery* and Section 36.0 *Vapor Emission Control at Gasoline Dispensing Facilities*, which will include the revisions issued on August 17, 2015 via 19 DE Reg. 199 (state effective date September 11, 2015), the

revisions issued on June 11, 2020 via 24 DE Reg. 61 (state effective date July 11, 2020), and the revisions issued on March 11, 2021 via 24 DE Reg. 944 (state effective date April 11, 2021).

EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

¹⁴ EPA's most recent approval of 7 DE Admin. Code 1124, Sections 26.0 and 36.0 was on August 11, 2010 (see 75 FR 48566).

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule to remove Delaware's Stage II vapor recovery requirements does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 30, 2022.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2022-07214 Filed 4-5-22; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 164

RIN 0945-AA04

Considerations for Implementing the Health Information Technology for Economic and Clinical Health (HITECH) Act, as Amended

AGENCY: Office for Civil Rights, Office of the Secretary, Department of Health and Human Services.

ACTION: Request for Information.

SUMMARY: The Office for Civil Rights (OCR) at the United States Department of Health and Human Services (HHS or the Department) is issuing this Request for Information (RFI) to solicit public comment on certain provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act, namely: The consideration of recognized security practices of covered entities and business associates when OCR makes determinations regarding fines, audits, and remedies to resolve potential violations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA)

Security Rule; and the distribution to harmed individuals of a percentage of civil money penalties (CMPs) or monetary settlements collected pursuant to the HITECH Act, which requires the Secretary of HHS (Secretary) to establish by regulation, and based upon recommendations from the Government Accountability Office (GAO), a methodology under which an individual who is harmed by an act that constitutes an offense under certain provisions of the HITECH Act or the Social Security Act relating to privacy or security may receive a percentage of any CMP or monetary settlement collected by OCR with respect to such offense.

DATES: Comments must be submitted on or before June 6, 2022.

ADDRESSES: Written comments may be submitted through any of the methods specified below. Please do not submit duplicate comments.

- *Federal eRulemaking Portal:* You may submit electronic comments at <https://www.regulations.gov> by searching for the Docket ID number HHS-OCR-0945-AA04. Follow the instructions for submitting electronic comments. Attachments should be in Microsoft Word or Portable Document Format (PDF).

- *Regular, Express, or Overnight Mail:* You may mail comments to U.S. Department of Health and Human Services, Office for Civil Rights, Attention: HITECH Act Recognized Security Practices Request for Information, RIN 0945-AA04, Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue SW, Washington, DC 20201.

All comments received by the methods and due date specified above may be posted without change to content to <https://www.regulations.gov>, which may include personal information provided about the commenter, and such posting may occur after the closing of the comment period. However, the Department may redact certain non-substantive content from comments before posting, including threats, hate speech, profanity, graphic images, or individually identifiable information about a third-party individual other than the commenter. In addition, comments or material designated as confidential or not to be disclosed to the public will not be accepted. Comments may be redacted or rejected as described above without notice to the commenter, and the Department will not consider in rulemaking any redacted or rejected content that would not be made available to the public as part of the administrative record. Commenters

providing information regarding their organizations' implementation of recognized security practices should not include details that, if disclosed to the public, may put the security of the organizations' information systems at risk.

Because of the large number of public comments normally received on **Federal Register** documents, OCR is not able to provide individual acknowledgments of receipt.

Please allow sufficient time for mailed comments to be received timely in the event of delivery or security delays.

Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.

Docket: For complete access to background documents or posted comments, go to <https://www.regulations.gov> and search for Docket ID number HHS-OCR-0945-AA04.

FOR FURTHER INFORMATION CONTACT: Lester Coffey at (800) 368-1019 or (800) 537-7697 (TDD).

SUPPLEMENTARY INFORMATION: OCR, which administers and enforces the HIPAA Privacy, Security, Breach Notification, and Enforcement Rules (HIPAA Rules), is issuing this RFI to improve its understanding of how covered entities and business associates (regulated entities) are voluntarily implementing recognized security practices as defined in Public Law 116-321, which added Section 13412 to the HITECH Act. The information received in public comments will help OCR determine what potential information or clarifications it needs to provide, through future guidance or rulemaking, to help regulated entities understand the application of the new law. This RFI also seeks public input on issues relating to the distribution of a percentage of CMPs or monetary settlements to individuals who are harmed by acts that constitute offenses under subtitle D of the HITECH Act or Section 1176 of the Social Security Act relating to privacy or security, as required by Section 13410(c)(3) of the HITECH Act. Among the issues on which OCR seeks public input are how to define compensable individual harm resulting from a violation of the HIPAA Rules and the appropriate distribution of payments to harmed individuals. OCR will use the information received in public comments to inform the development of future distribution methodology and policies.

I. Background

This RFI seeks public comment on how covered entities and business associates are voluntarily implementing recognized security practices as identified in Public Law 116–321,¹ and public input on potential information or clarifications OCR could provide on its implementation of the statute in future guidance or rulemaking. This RFI also seeks public comment on recommended methodologies for sharing CMPs or monetary settlements with harmed individuals as required by section 13410(c)(3) of the HITECH Act.²

A. Public Law 116–321 (Section 13412 of the HITECH Act, as Amended)

Public Law 116–321, which adds section 13412 to Part 1 of subtitle D of the HITECH Act,³ requires the Secretary to consider “recognized security practices” that HIPAA covered entities and business associates adequately demonstrate were in place for the previous 12 months when making determinations regarding fines (herein, “penalties”) under section 1176 of the Social Security Act (as amended by section 13410 of the HITECH Act),⁴ audits, and remedies to resolve potential violations of the HIPAA Security Rule⁵ (Security Rule).⁶ The statute does not expressly require rulemaking; however, the Department is seeking comment to inform potential future guidance or rulemaking that may help stakeholders better understand the application of the statute.

This RFI solicits comment on how covered entities and business associates understand and are implementing

“recognized security practices,” how they anticipate adequately demonstrating that recognized security practices are in place, and other implementation issues they are considering or would like OCR to clarify for the public and stakeholders through potential guidance or rulemaking.

1. Recognized Security Practices

Public Law 116–321 defines “recognized security practices” as:

- The standards, guidelines, best practices, methodologies, procedures, and processes developed under section 2(c)(15) of the National Institute of Standards and Technology (NIST) Act;
- the approaches promulgated under section 405(d) of the Cybersecurity Act of 2015; and
- other programs and processes that address cybersecurity and that are developed, recognized, or promulgated through regulations under other statutory authorities.⁷

The statute does not require covered entities and business associates to implement recognized security practices,⁸ nor does it provide criteria for covered entities or business associates to use when selecting which category of recognized security practices to implement (*i.e.*, developed under section 2(c)(15) of the NIST Act; promulgated under section 405(d) of the Cybersecurity Act of 2015; or other programs that address cybersecurity developed, recognized, or promulgated through regulations under other statutory authorities). However, the statute does require that recognized security practices must be consistent with Security Rule requirements.⁹

2. Adequately Demonstrate

Cybersecurity threats are a significant concern driving the need to safeguard electronic protected health information (ePHI) as required by the Security Rule. One of the primary goals of Public Law 116–321 is to encourage covered entities and business associates to do “everything in their power to safeguard patient data.”¹⁰ To achieve this goal, Congress sought to “[incentivize] healthcare entities to adopt strong cybersecurity practices by encouraging

the Secretary of HHS to consider entities’ adoption of recognized cybersecurity practices when conducting audits or administering HIPAA fines.”¹¹ Thus, the statute requires OCR to take into consideration in certain Security Rule enforcement and audit activities whether a covered entity or business associate has adequately demonstrated that recognized security practices were “in place” for the prior 12 months.

OCR believes that the phrase “had . . . [recognized security practices] in place,” as used in Public Law 116–321,¹² is equivalent to the term “implement[ed]” as used and clarified in the Security Rule.¹³ Therefore, it is insufficient for a regulated entity to merely establish and document the initial adoption of recognized security practices. For OCR to consider such practices when making determinations relating to penalties, audits, or other remedies, the entity must also demonstrate that the practices are fully implemented, meaning that the practices are actively and consistently in use by the covered entity or business associate over the relevant period of time.

3. The Previous 12 Months

The statute requires OCR, “when making determinations relating to fines under such section 1176 (as amended by section 13410) or such section 1177, decreasing the length and extent of an audit under section 13411, or remedies otherwise agreed to by the Secretary,” to consider whether the covered entity or business associate has adequately demonstrated that the recognized security practices were in place for a period of “not less than the previous 12 months.” The statute does not state what action initiates the beginning of the 12-month look back period.

B. Section 13410(c)(3) of the HITECH Act

Section 13410(c)(1) of the HITECH Act¹⁴ requires that any CMP or monetary settlement collected with respect to an offense punishable under subtitle D of the HITECH Act¹⁵ or section 1176 of the Social Security

¹ See Section 1 of Public Law 116–321, 134 Stat. 5072 (January 5, 2021).

² The HITECH Act, enacted on February 17, 2009, as title XIII of division A and title IV of division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111–5, modifies certain provisions of the Social Security Act pertaining to the HIPAA regulations, 45 CFR parts 160 and 164.

³ See 42 U.S.C. 17931 *et seq.*

⁴ This RFI uses the terms “civil money penalty” or “penalty” in place of “fine” for consistency with section 1176 of the Social Security Act and the Enforcement Rule. See generally 42 U.S.C. 1320d–5 and 45 CFR part 160, subparts C, D, and E.

⁵ 45 CFR part 164, subparts A and C. The HIPAA Security Rule establishes national standards to protect individuals’ electronic protected health information (ePHI) that is created, received, maintained, or transmitted by a regulated entity. The Security Rule requires appropriate administrative, physical, and technical safeguards to ensure the confidentiality, integrity, and availability of ePHI.

⁶ Remedies agreed to by the covered entity or business associate and the Secretary generally consist of a signed resolution agreement that includes payment of a settlement amount, and a corrective action plan. See <https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/examples/how-ocr-enforces-the-hipaa-privacy-and-security-rules/index.html>.

⁷ See section 13412(b)(1) of the HITECH Act, 42 U.S.C. 17941(b)(1).

⁸ See section 13412(b)(3) of the HITECH Act, 42 U.S.C. 17941(b)(3).

⁹ See section 13412(b)(1) of the HITECH Act, 42 U.S.C. 17941(b)(1).

¹⁰ Representative Pallone (NJ), “Requiring Secretary of Health and Human Services to Consider Certain Recognized Security Practices,” Congressional Record 166:208 (December 9, 2020), p. H7089, available at <https://www.congress.gov/congressional-record/2020/12/9/house-section/article/h7088-1>.

¹¹ *Id.*

¹² See section 13412(a) of the HITECH Act, 42 U.S.C. 17941(a).

¹³ “We use the term ‘implement’ to clarify that the procedures must be in use, and we believe that the requirement to implement policies and procedures requires, as an antecedent condition, the establishment or adaptation of those policies and procedures.” Health Insurance Reform: Security Standards; Final Rule. 68 FR 8334, 8349 (February 20, 2003).

¹⁴ See 42 U.S.C. 17939(c)(1).

¹⁵ See 42 U.S.C. Chapter 156, Subchapter III.

Act,¹⁶ insofar as such section relates to privacy or security, be transferred to OCR for the purpose of enforcing the provisions of subtitle D of the HITECH Act and subparts C and E of part 164 of title 45, Code of Federal Regulations.

Section 13410(c)(3) of the HITECH Act requires the Secretary to establish a methodology for the distribution of a percentage of a CMP or monetary settlement amount collected for noncompliance with the HIPAA Rules to an individual harmed by the noncompliance.¹⁷

Section 13410(d) of the HITECH Act modified section 1176(a)(1) of the Social Security Act to require that OCR base determinations of appropriate penalty amounts on the nature and extent of the violation and the nature and extent of the harm resulting from such violation.¹⁸ The statute does not define “harm,” nor does it provide direction to aid HHS in defining the term.

As part of its implementation of Section 13410(d) of the HITECH Act,¹⁹ HHS amended the Enforcement Rule to identify four types of harm that OCR may consider as aggravating factors in assessing a covered entity’s or business associate’s CMP or proposed settlement amount: (1) Physical harm, (2) financial harm, (3) reputational harm, and (4) harms that hinder one’s ability to obtain health care.^{20,21} In addition, HHS made clear in both the regulatory text and preamble to the final rule that OCR is not limited to the four enumerated types of harm, stating that “in determining the nature and extent of harm involved, we may consider all relevant factors, not just those expressly included in the text of the regulation.”²²

This RFI solicits public comment on the types of harms that should be considered in the distribution of CMPs and monetary settlements to harmed individuals and the suitability of the described potential methodologies for sharing and distributing monies to harmed individuals, and invites the public to submit any alternative methodologies that are not identified herein. The discussion below informs commenters about OCR’s enforcement of the HIPAA Rules, the challenges associated with defining harm to individuals, the potential distribution

methodologies GAO recommended for consideration, and other implementation issues.

1. Background on OCR’s Enforcement of the HIPAA Rules

OCR enforces the HIPAA Rules by investigating complaints submitted to OCR that allege noncompliance with the HIPAA Rules. OCR also conducts compliance reviews of potential noncompliance brought to OCR’s attention by other means, such as through breach reports to the Secretary, to determine whether covered entities or business associates are in compliance with the HIPAA Rules.

OCR resolves the majority of HIPAA cases by providing technical assistance and/or obtaining voluntary corrective action by the covered entity or business associate. However, where the nature and scope of the noncompliance warrants additional enforcement action, OCR may pursue a resolution agreement and corrective action plan with a payment of a settlement, or it may impose a CMP.²³

OCR is authorized under Section 13410 of the HITECH Act²⁴ to impose CMPs for violations occurring on or after February 18, 2009,²⁵ of:

- A minimum of \$100 for each violation where the covered entity or business associate did not know and, by exercising reasonable diligence, would not have known that the covered entity or business associate violated such provision, except that the total amount imposed on the covered entity or business associate for all violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000.

- A minimum of \$1,000 for each violation due to reasonable cause and not to willful neglect, except that the total amount imposed on the covered entity or business associate for all violations of an identical requirement or prohibition during a calendar year may not exceed \$100,000. Reasonable cause means an act or omission in which a covered entity or business associate knew, or by exercising reasonable diligence would have known, that the act or omission violated an administrative simplification provision, but in which the covered entity or

business associate did not act with willful neglect.

- A minimum of \$10,000 for each violation due to willful neglect and corrected within 30 days, except that the total amount imposed on the covered entity or business associate for all violations of an identical requirement or prohibition during a calendar year may not exceed \$250,000.

- A minimum of \$50,000 for each violation due to willful neglect and uncorrected within 30 days, except that the total amount imposed on the covered entity or business associate for all violations of an identical requirement or prohibition during a calendar year may not exceed \$1,500,000.

The amount of a CMP that OCR pursues may vary based on the date and number of violations, the culpability of the entity, and the existence of certain mitigating and aggravating factors in accordance with 45 CFR 160.404, 160.406, and 160.408 and bounded by the calendar year caps stated above. For example, harm to an individual is an aggravating factor that may increase the CMP.²⁶ OCR may also determine that it is appropriate to waive a CMP in whole or in part to the extent the penalty would be excessive relative to the violation, in accordance with 45 CFR 160.412. In all cases, the total CMP may not exceed the statutory maximum established in the HITECH Act.²⁷

When OCR’s investigation indicates noncompliance with the HIPAA Rules, OCR may attempt to reach a resolution of the matter satisfactory to the Secretary by informal means.^{28,29} Informal means may include a settlement agreement, also called a resolution agreement (RA). RAs involve the payment of a monetary amount that is generally less than the maximum potential CMP for which the covered entity or business associate could be liable. They also generally include a corrective action plan that requires the covered entity or business associate to address remaining compliance issues and to undergo monitoring of its

²⁶ 45 CFR 160.408(b).

²⁷ See 45 CFR 160.404; see also 84 FR 18151 (April 30, 2019) for OCR’s Notice of Enforcement Discretion Regarding HIPAA Civil Money Penalties for information on the annual limits to CMPs that may be imposed for HIPAA violations.

²⁸ 45 CFR 160.312(a)(1).

²⁹ OCR’s website lists announcements of resolution agreements OCR has entered into with covered entities and business associates for alleged violations of the HIPAA Rules and CMPs OCR has imposed for violations of the HIPAA Rules. See <https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/agreements/index.html>.

¹⁶ See 42 U.S.C. 1320d–5.

¹⁷ See 42 U.S.C. 17939(c)(3).

¹⁸ See 42 U.S.C. 17939(d).

¹⁹ See generally 78 FR 5566 (January 25, 2013).

²⁰ 45 CFR 160.408(b).

²¹ For further discussion of the factors considered by OCR when determining the amount of a CMP, including the types of harm, see 71 FR 8390, 8407–09 (February 16, 2006); 75 FR 40868, 40881 (July 14, 2010); and 78 FR 5585.

²² 78 FR 5585.

²³ Information about previously imposed CMPs and resolution agreements entered into is available at <https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/agreements/index.html>.

²⁴ 42 U.S.C. 1320d–5(a)(3).

²⁵ For violations occurring on or after November 3, 2015, the HITECH Act CMP amounts are adjusted annually pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015. Sec. 701 of Public Law 114–74. The annual inflation amounts are found at 45 CFR 102.3.

compliance with the HIPAA Rules for a specified period of time.

If the indicated noncompliance is not resolved by informal means, OCR so informs the covered entity or business associate and provides them an opportunity to submit written evidence of any mitigating factors or affirmative defenses for consideration under 45 CFR 160.408 and 160.410.³⁰ The covered entity or business associate must submit any such evidence within 30 days of receipt of such notice. If OCR finds that a CMP should be imposed, the covered entity or business associate is informed of the finding in a Notice of Proposed Determination.

2. Determining Compensable Harm

As discussed above, the term “harm” is not defined by statute, and the HITECH Act does not provide HHS direction in how to define harm. Rather, the only qualification is that a relationship exists between the harm and the act of noncompliance with the HIPAA Rules. The Enforcement Rule identifies four types of harm as mitigating and aggravating factors that may be considered in determining the amount of CMPs—physical, financial, reputational, and ability to obtain health care—while leaving open the possibility of other types of harm.^{31 32} However, the Enforcement Rule does not specifically define each of those types of harms, and the HITECH Act does not require OCR to apply those exact same harms to a methodology for distributing a percentage of CMPs and monetary settlements to harmed individuals. Therefore, OCR is considering what harms may make an individual eligible to receive such distributions.

3. Establishing a Methodology

Section 13410(c)(2) of the HITECH Act requires the Comptroller General to submit to the Secretary recommendations for a methodology under which an individual who is harmed by noncompliance with the privacy and security requirements related to PHI may receive a percentage of any CMP or monetary settlement collected by OCR. The HITECH Act directs HHS to establish a methodology for sharing CMPs and monetary settlements “based on the recommendations submitted” by the

GAO.³³ The GAO recommendations do not address how to identify or define harm; instead, they offer distinct models for HHS to consider in developing its own methodology.³⁴

In establishing a methodology, OCR must also consider the limitations on funding available for harmed individuals. Several factors influence OCR’s assessment of this question. First, the HITECH Act does not guarantee or require that harmed individuals will be made whole by the sharing of CMPs and monetary settlements, nor does HIPAA provide a private right of action for an individual to sue a covered entity or business associate for violating their privacy rights. However, HIPAA does not preclude such remedies under state or other law.³⁵ Second, OCR is limited by statute in the total amount of a CMP that it can pursue for each alleged violation of the HIPAA Rules.³⁶ Finally, because OCR is not required to pursue an enforcement action to address every potential violation of the HIPAA Rules, every potential harm caused by such potential violations cannot necessarily be redressed.

GAO recommended three models for consideration: (1) Individualized determination; (2) fixed recovery; and (3) hybrid. Below is a description of the potential models and examples that are in use today.

³³ Section 13410(c)(3) of the HITECH Act, 42 U.S.C. 17939(c)(3).

³⁴ See generally Letter to HHS Secretary Kathleen Sebelius from GAO Acting General Counsel Lynn H. Gibson Recommending Models for the Distribution of Civil Monetary Penalties (August 9, 2010), available in the docket for this RFI.

³⁵ See 45 CFR 160.418. Further, every state’s tort law system provides individuals a means for seeking redress when they are harmed by a negligent breach of duty. Such redress may include addressing potential harms caused by violations of federal or other privacy laws. Some states have also enacted a private right of action to allow individuals to recover when they are harmed by the impermissible sharing of their information. For instance, California Civil Code §§ 56 *et seq.* permits an individual whose medical information has been negligently disclosed to seek nominal damages of \$1,000 without proving evidence of suffering. New York Public Health Law § 12 provides for civil penalties not to exceed \$2,000 for violations of its health privacy law, and up to \$10,000 for a violation directly resulting in serious physical harm to a patient. North Carolina allows an individual to bring a civil action for damages of up to \$5,000 per incident or treble actual damages for each publication of personal information in violation of the state’s identity theft law. North Carolina also provides an individual with a private right of action if the individual is harmed by an entity’s failure to report the breach of personally identifiable information. See N.C. General Statute §§ 75–60 *et seq.*, 75–16, 65–65.

³⁶ See section 13410(d) of the HITECH Act, 42 U.S.C. 17939(d).

The Individualized Determination Model

The individualized determination model is based on the private civil action model whereby a plaintiff bears the burden of proof with respect to both the harm suffered by the plaintiff, including the nature and extent of the harm, and liability incurred by the defendant. Evidence concerning the nature and extent of harm supports the compensation awarded to a plaintiff. In civil actions, juries typically determine liability and compensation to be awarded based on instructions from the court regarding considerations when determining the award. In general, “translating legally recognized harm into monetary awards is peculiarly a function of the jury,” particularly when assigning value to intangible and noneconomic losses that may not be readily quantified, such as pain and suffering, loss of reputation, or emotional distress.³⁷

A variation of the individual approach is the civil action known as a class action, where a group of similarly harmed individuals may pursue claims for redress of harm together. Class actions occur for several reasons, such as for judicial economy to avoid multiple adjudications of the same legal or factual issues or to permit a group to pursue recovery when it may not be economically feasible to pursue claims as individuals. While the burdens of proof for harm and liability that exist for a private civil action remain the same for plaintiffs, awards are shared among the class of harmed individuals, often based on a fixed percentage of the total recovery amount.

The Consumer Financial Protection Bureau (CFPB or the Bureau) uses an individual assessment model to distribute monetary awards for economic harms. The CFPB has authority for oversight and regulation of consumer financial products and services, including the ability to direct money into the Consumer Financial Civil Penalty (CFCP) Fund, which may then be used to compensate individuals (referred to in regulation as “victims”) who have been harmed by an activity for which a penalty was imposed by the Bureau.³⁸ The CFCP Fund’s rules define compensable harm for a victim as: (1) The victim’s share of an ordered redress³⁹ amount; (2) if no ordered

³⁷ See GAO Letter, *supra* note 34, at 4.

³⁸ See Wall Street Reform and Consumer Protection Act § 1017(d)(2) (Pub. L. 111–203), rules finalized at 12 CFR part 1075.

³⁹ Redress is defined as “any amounts—including but not limited to restitution, refunds, and damages—that a final order requires a defendant:

³⁰ 45 CFR 160.312(a).

³¹ 45 CFR 160.408(b). (“The nature and extent of the harm resulting from the violation, consideration of which *may include but is not limited to*”) (emphasis added).

³² OCR is not required to prove that a violation of the HIPAA Rules has resulted in harm to individuals in order to determine that the imposition of a CMP is warranted. See 45 CFR 160.312 and 45 CFR part 160, subpart D.

redress amount, then a harm formulation contained in the underlying final order (if any); or (3) if no ordered redress or harm formulation, then the victim's out of pocket losses, except to the extent such losses are impracticable to determine.⁴⁰ Payments from the Fund may only be made to eligible victims for compensable harm when calculable and only to the extent a person has not received or is not reasonably likely to receive full compensation for the same compensable harm from another source.⁴¹

Compensation from the CFCP Fund occurs in a two-step process. First, the Fund administrator allocates funds for payment to eligible victims. Second, the Fund administrator designates a payments administrator with responsibility for distribution of funds; the distribution methodology is not detailed in the CFPB's regulations.⁴² Funds received by the CFPB for a given violation are available for distribution to any eligible class of victims with uncompensated harm where distribution is practicable. To the extent that funds remain after all eligible victims have been fully compensated, CFCP Fund amounts not used for individual compensation may be used by the CFPB for consumer education and financial literacy programs.

The Fixed Recovery Model

Under the fixed recovery model, awards are generally either fixed or calculated by a formula established by law, and recovery is based on the prescribed formula. The GAO cites the Black Lung Benefits Act⁴³ (BLBA) as one example. The BLBA provides benefits to coal miners and their families for disability or death due to pneumoconiosis (also known as black

lung disease) resulting from employment in and around coal mines. To receive an award, an individual or family must first provide medical information demonstrating the medical condition, similar to the evidence of harm required in the individualized determination model. Recovery is based upon a statutory formula and reduced when compensation for the same condition is received from other sources (e.g., worker's compensation for pneumoconiosis). An individual's recovery does not vary due to the specific individual's economic or noneconomic harm as in the individualized determination model, but the fixed determination model does offer advantages in its relative ease of administration.

The Hybrid Model

The hybrid model combines elements of the individualized determination and fixed recovery models. GAO notes that hybrid models may be used to reflect uncertainty regarding the types of harm that can be demonstrated with evidence. For example, the Privacy Act of 1974 permits a private right of action for the unlawful disclosure of an individual's records by a federal agency. A plaintiff who demonstrates that a federal agency unlawfully disclosed the plaintiff's records in a willful or intentional manner may receive the minimum amount of \$1,000 when the evidence of quantifiable harm is less than \$1,000 and may recover the full amount of actual damages when there is evidence of quantifiable harm exceeding \$1,000. In a 2009 class action settlement by the Department of Veterans Affairs involving Privacy Act violations, the VA payments were limited to a minimum of \$75 and maximum of \$1,500.⁴⁴ When settling a case with ChoicePoint⁴⁵ under the Fair Credit Reporting Act, the Federal Trade Commission (FTC) became responsible for identifying harmed individuals and determining the amount each person would receive. The FTC determined that individual awards would be capped at \$1,500 for out-of-pocket expenses and \$3,060 for lost time.⁴⁶ In both of these examples, the methodologies include a fixed amount of recovery based on the harm individuals are able to demonstrate, incorporating features of both the fixed

recovery and individualized determination models.

II. Questions for Public Comment

The Department requests comments on the questions below. The Department welcomes comments from all stakeholders, including covered entities and their business associates; State, local, territorial, and tribal governments and their agencies; individuals; and consumer advocates and groups as well as any other interested persons or entities. The Department asks that commenters indicate throughout their submitted comments the question(s) to which a comment is responding.

A. Public Law 116–321

As explained above, Public Law 116–321 amends Part 1 of subtitle D of the HITECH Act to require OCR to consider recognized security practices that organizations adequately demonstrate were in place for the previous 12 months when determining penalties. The Department seeks input from commenters regarding their voluntary implementation of recognized security practices. Additionally, the Department seeks input from commenters on any additional information or clarifications regulated entities need from OCR regarding its implementation of this new law. The first set of questions addresses regulated entities' implementation of "recognized security practices."

1. What recognized security practices have regulated entities implemented? If not currently implemented, what recognized security practices do regulated entities plan to implement?

2. What standards, guidelines, best practices, methodologies, procedures, and processes developed under section 2(c)(15) of the NIST Act do regulated entities rely on when establishing and implementing recognized security practices?

3. What approaches promulgated under section 405(d) of the Cybersecurity Act of 2015 do regulated entities rely on when establishing and implementing recognized security practices?

4. What other programs and processes that address cybersecurity and that are developed, recognized, or promulgated through regulations under other statutory authorities do regulated entities rely on when establishing and implementing recognized security practices?

5. What steps do covered entities take to ensure that recognized security practices are "in place"?

a. What steps do covered entities take to ensure that recognized security

(1) To distribute, credit, or otherwise pay to those harmed by a violation; or

(2) To pay to the Bureau or another intermediary for distribution to those harmed by the violation." See 12 CFR 1075.101."

⁴⁰ 12 CFR 1075.104(c).

⁴¹ 12 CFR 1075.104(b).

⁴² 12 CFR 1075.108(b) requires the payments administrator to "submit to the Fund Administrator a proposed plan for the distribution of funds allocated to a class of victims," while 12 CFR 1075.108(c) details the contents the Fund Administrator may require the payments administrator to include. Thus, the distribution methodology is determined on a case-by-case basis. According to the CFPB website, "Some payments are administered by the defendant. . . . In other cases, we may require the person or company that violated the law to make the payment to the CFPB, and then we distribute that money to the victims." <https://www.consumerfinance.gov/enforcement/payments-harmed-consumers/payments-by-case/>. A full listing of redress payments administered by the Bureau and victim payments from the CFCP Fund is available at the website above.

⁴³ Public Law 92–303, 30 U.S.C. Chapter 22, Subchapter IV.

⁴⁴ *In Re Dept. of Veterans Affairs Data Theft Litigation*, 1:06–MC–0506–JR (D.D.C. filed January 27, 2009), settlement agreement, pp. 9–13.

⁴⁵ *United States v. ChoicePoint Inc.*, 1:06–CV–0198 (N.D. Ga. Entered February 15, 2006), stipulated final judgment, pp. 4, 17.

⁴⁶ See *id.* at pp. 9–10.

practices are *in use throughout their enterprise*?

i. What constitutes implementation throughout the enterprise (*e.g.*, servers, workstations, mobile devices, medical devices, apps, application programming interfaces (APIs))?

6. What steps do covered entities take to ensure that recognized security practices are actively and consistently in use continuously over a 12-month period?

7. The Department requests comment on any additional issues or information the Department should consider in developing guidance or a proposed regulation regarding the consideration of recognized security practices.

B. Section 13410(c)(3)

As explained above, Section 13410(c)(3) of the HITECH Act requires the Department to establish a methodology whereby an individual who is harmed by noncompliance with the HIPAA Rules may receive a percentage of a penalty or monetary settlement collected with respect to that noncompliance. Although the Enforcement Rule permits the Department to consider certain types of harm when determining the amount of a penalty, neither the HITECH Act nor the HIPAA Rules define harm generally or for the purpose of identifying and quantifying harm to determine an amount to be shared with an individual. For this reason, the Department seeks input from commenters about how to define harm and what bases should be used for deciding which injuries are compensable.

The first set of questions below addresses what constitutes individual harm in the context of the HIPAA Rules and whether all possible harms or only certain harms should be eligible for a distribution.

8. What constitutes compensable harm with respect to violations of the HIPAA Rules?

a. Should compensable harm be limited to past harm?

i. Should only economic harm be considered?

ii. Should harm be limited to the types of harm identified as aggravating factors in assessing CMPs (physical, financial, reputational, and ability to obtain health care)?⁴⁷

iii. Should harm be expanded to include additional types of noneconomic harms such as emotional harm?

A. If compensable harm should be expanded to include noneconomic

harms, what method should OCR use to evaluate and measure the harm?

b. Should the potential for future harm be compensable?

i. Are there types of future harm that should not be recognized as compensable? For example, how should OCR treat an individual that has no demonstrated injury-in-fact and only a risk of future harm? What makes future harm likely?

ii. How will these types of harm be proven and measured?

c. Should OCR allow individuals to include actual and perceived harm, which can vary based upon context and individual, such that different individuals may suffer different amounts of harm even though both suffered the same loss of privacy?

i. How should such variation in harm be measured?

d. Are there types of harm that should not permit an individual to receive a portion of a CMP or monetary settlement?

9. Should harm be presumed in certain circumstances? For example, should noncompliance with certain provisions of the HIPAA Rules be presumed to have harmed all affected individuals? If so, which provisions?

a. Conversely, should noncompliance with certain provisions of the HIPAA Rules be presumed not to have harmed individuals unless some condition is met? For example, should noncompliance with certain workforce training requirements be recognized as harm only when accompanied by an impermissible use or disclosure of PHI?

b. Should the Department require an individual to provide evidence of harm before distributing a portion of a CMP or monetary settlement to that individual? If yes, what types of evidence should be required to demonstrate compensable harm?

10. The Department seeks information about current real-world impacts of loss of privacy on an individual's willingness to seek care or disclose health information to covered entities to better understand the nature of privacy harms that occur.

11. Should the Department recognize as harm the release of information about a person other than the individual who is the subject of the information (*e.g.*, a family member whose information was included in the individual's record as family health history) for purposes of sharing part of a CMP or monetary settlement? If yes, should the individual who is not the subject of the information be permitted to receive a portion of a CMP or monetary settlement?

The HITECH Act gives no direction regarding an amount to be set aside or

distributed to individuals other than requiring it to be a percentage of the CMP or monetary settlement. Other federal agencies have approached these determinations in a variety of ways. For example, while the CFPB does not set limits on the amount to be made available for distribution to victims, payments must be practicable.⁴⁸ The Securities and Exchange Commission (SEC) exercises discretion regarding whether to apply any or all of a penalty amount to compensate an investor for a loss, with remaining amounts reverting to the U.S. Treasury. The following questions seek comment regarding factors to be considered in establishing a methodology for calculating an amount to be set aside for distribution to individuals and whether there are circumstances in which funds should not be set aside for distribution.

12. Should there be a minimum total settlement or penalty amount before the Department sets aside funds for distribution?

13. Under Section 13410(c)(3) of the HITECH Act,⁴⁹ settlements or CMPs collected in response to a violation of the HIPAA Rules are to be used for the purposes of enforcing the HIPAA Rules. What role should OCR's continued ability to support enforcement activities play in determining whether there should be a minimum total settlement or penalty amount before the Department sets aside funds for distribution?

14. Should there be a minimum amount available per harmed individual before funds are set aside for distribution?

15. Should the Department consider external recoveries or compensation received, available, or likely to be available for harmed individuals when deciding whether to set aside funds for distribution?

16. Should there be a minimum or maximum percentage or amount set aside for distribution? If so, what should the maximum and/or minimum be and why?

17. What factors should the Department consider in determining what total percentage of a CMP or monetary settlement should be set aside for harmed individuals?

a. For example, should the percentage set aside be dependent upon the number of individuals that may have been harmed, the amount or type of harm, be based on a fixed percentage, or another factor?

⁴⁸ See 12 CFR 1075.109 for an explanation of when payments to victims are considered to be "impracticable."

⁴⁹ 42 U.S.C. 17939(c)(3).

⁴⁷ 45 CFR 160.408(b).

b. Should the percentage set aside take into account OCR's continued ability to support enforcement activities with the remaining funds?

The following questions address how to provide notice to affected individuals that monetary distribution may be available.

18. How should harmed individuals be identified? How should they be notified that they may be eligible for distributions?

19. If an individual is deceased, should the family or estate be notified and eligible to receive a distribution?

20. If an individual cannot be located and notified within the time frame for distribution, should the individual be permitted to receive a distribution at a later date?

The following questions relate to the three recovery models that GAO identified and related considerations regarding the administration of a distribution methodology.

21. What goals should the Department prioritize when selecting a distribution model?

a. For example, should the methodology ensure that all harmed individuals receive compensation?

b. Should it instead maximize distributions of available funds to the

individuals most harmed by noncompliance?

22. If the Department adopts a model that allows different distributions for differently harmed individuals, how should the distributions be allocated?

23. Should there be a cap on the total percentage amount that any individual can collect to ensure that all harmed individuals receive a distribution or for any other reason?

24. Are there other distribution models to consider? Please provide relevant examples.

25. Should the distribution methodology adjust or deny distribution amounts based on the potential or actual compensation of individuals through other mechanisms outside of the distribution requirement for the same action under the HITECH Act, such as in a manner similar to the CFPB?

26. Should the distribution methodology recognize and account for in-kind benefits (e.g., credit monitoring paid for by the entity) as compensation for purposes of reducing or denying a distribution to those individuals?

27. Should an individual have a right to appeal a decision not to disburse funds to the individual (e.g., where the administrator of the fund determines that the individual did not suffer

compensable harm or has received adequate compensation from another source)? If so, how should appeals be adjudicated?

28. Within what timeframe after a settlement agreement or imposition of a CMP should individuals submit claims to be eligible for disbursement?

29. Within what timeframe should funds be disbursed to harmed individuals?

a. Should timeliness requirements be determined on a case-by-case basis, depending on factors such as the number of individuals affected by a violation?

b. What other factors should be considered?

30. Finally, the Department requests comment on any additional factors or information the Department should consider in developing a proposed methodology to share a percentage of CMPs and monetary settlements with harmed individuals.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2022-07210 Filed 4-5-22; 8:45 am]

BILLING CODE 4153-01-P

Notices

Federal Register

Vol. 87, No. 66

Wednesday, April 6, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 1, 2022.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 6, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Economic Research Service

Title: Conservation Auction Behavior: Effects of Default Offers and Score Updating.

OMB Control Number: 0536–NEW.

Summary of Collection: Data collection for this project is conducted under the authority of the 7 U.S.C. 2204(a). This data collection will use an online simulated auction experiment with former participants in the USDA Conservation Reserve Program (CRP) general signup to (1) Study the anchoring effect of using a high-scoring default offer in the CRP enrollment software rather than an active-choice default, and (2) study how the timing of information about final ranking score in the software influences responsive to baseline ranking scores. Outputs for the experiment will be used to inform potential updates to the CRP software and enrollment software as well as future lab experiments on general conservation auctions.

Need and Use of the Information: This study will collect data on choice made using a lab-in-the-field experiment, in which the study participants, farmers who have previously participated in a recent CRP signup, will be asked to make a set of hypothetical offers to a simulated CRP signup. The data collection is being conducted by USDA Economic Research Service in collaboration with researchers from the University of Delaware's Center for Behavioral and Experimental Agrienvironmental Research. This information will potentially be of use to USDA's Farm Service Agency when conducting signups for CRP.

If this study is not conducted, USDA would lack context-specific research when considering program spending on software redesign to change the defaults used in the enrollment software or training of field agents to change the defaults used when advising farmers on program enrollment.

Description of Respondents: Farmers or Farmland Owners.

Number of Respondents: 11,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,467.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–07301 Filed 4–5–22; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of proposed new fee sites.

SUMMARY: The Rio Grande National Forest is proposing to charge new fees at multiple recreation sites listed in **SUPPLEMENTARY INFORMATION** of this notice. Funds from fees would be used for operation, maintenance, and improvements of these recreation sites. An analysis of nearby developed recreation sites with similar amenities shows the proposed fees are reasonable and typical of similar sites in the area.

DATES: If approved, the new fees would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Rio Grande National Forest, Attention: Recreation Fees, 1803 West Highway 160, Monte Vista, CO 81144.

FOR FURTHER INFORMATION CONTACT: Carlos Gonzales, Recreation Program Manager at 719–852–6221 or carlos.gonzales2@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The fees are only proposed at this time and will be determined upon further analysis and public comment. Reasonable fees, paid by users of these sites, will help ensure that the Forest can continue maintaining and improving recreation sites like this for future generations.

As part of this proposal, the Cathedral, Comstock, Ivy Creek, Lost Trail, Rio Grande, Road Canyon, and Rock Creek campgrounds are proposed at \$10 per night. In addition, this proposal would implement new fees at

two recreation rentals: Duncan Cabin proposed at \$40 per night and Alamosa Guard Station at \$55 per night.

New fees would provide increased visitor opportunities as well as increased staffing to address operations and maintenance needs and enhance customer service. Once public involvement is complete, these new fees will be reviewed by the Rocky Mountain Regional Office prior to a final decision and implementation.

Advanced reservations for cabins will be available through www.recreation.gov or by calling 1-877-444-6777. The reservation service charges an \$8.00 fee for reservations.

Dated: April 1, 2022.

Sandra Watts,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2022-07271 Filed 4-5-22; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Disposal of National Forest Timber, Timber Export and Substitution Restrictions

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the renewal with revisions of a currently expired information collection, *Disposal of National Forest Timber, Timber Export and Substitution Restrictions*.

DATES: Comments must be received in writing on or before June 6, 2022 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Director, Forest Management, 1400 Independence Avenue SW, Mail Stop 1103, Washington, DC 20250-0003.

Comments also may be submitted via facsimile to (202) 205-1045 or electronic mail to kraig.kidwell@usda.gov.

Comments submitted in response to this notice may be made available to the public through relevant websites and upon request. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and

included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

The public may view comments received on the World Wide Web/ internet site at: <http://www.fs.fed.us/forestmanagement>. The public may request an electronic copy of the draft supporting statement and/or any comments received be sent via return email. Requests should be emailed to kraig.kidwell@usda.gov.

FOR FURTHER INFORMATION CONTACT:

Kraig Kidwell, Contracts and Appraisals Group Lead, at 541-961-2614 or kraig.kidwell@usda.gov. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 twenty-four hours a day, every day of the year, including holidays. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Disposal of National Forest Timber, Timber Export and Substitution Restrictions.

OMB Number: 0596-0114.

Expiration Date of Approval: May 31, 1999.

Type of Request: Reinstatement of an Information Collection.

Abstract: Pursuant to statutory requirements at 16 U.S.C. 620, each person who acquires, either directly or indirectly, unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States shall report the receipt and disposition of such timber to the Secretary concerned, in such form as such Secretary may by rule prescribe.

For the USDA Forest Service, such report shall be on a calendar year basis and shall be sent to the Regional Forester, or other official to whom such authority is delegated, who administers the National Forest System lands from which the majority of timber originated, not later than March 1 of each year, beginning March 1, 1997.

Respondents are persons who acquire timber originating from National Forest System lands west of the 100th meridian in the contiguous 48 States. The data collected are used by the agency to monitor and enforce statutory

requirements that Federal timber is not exported or used in direct or indirect substitution for private timber that is exported. Data gathered in this information collection is not available from other sources.

Forms Associated With This Information Collection

FS-2400-59—Certification of Receipt and Disposition of Timber Originating from National Forest System Lands: This form will be used to collect and certify the sale or company name where NFS timber is acquired from, the date acquired, National Forest, Contract number and brand code or brand, name of entity to whom NFS timber was sold or transferred, description of the relationship with the entity to whom NFS timber was sold or transferred, date disposed, volume acquired, volume domestically processed by purchaser or affiliates, and volume sold or transferred for domestic processing.

Estimate of Burden: 240 minutes.

Type of Respondents: Individuals, large and small businesses, and corporations who acquire National Forest System timber.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 4,000 hours.

Comment is Invited: The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes or the proper performance of the functions of the agency, including whether the information shall have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Chris French,

Deputy Chief, National Forest System.

[FR Doc. 2022-07308 Filed 4-5-22; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE**Forest Service****Notice of Proposed New Fee Sites**

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of proposed new fee sites.

SUMMARY: The Ozark-St. Francis National Forest in Arkansas is proposing to charge new fees at multiple recreation sites listed in **SUPPLEMENTARY INFORMATION** of this notice. Funds from fees would be used for operation, maintenance, and improvements of these recreation sites. Many sites recently have been reconstructed or amenities are being added to improve services and experiences. An analysis of nearby developed recreation sites with similar amenities shows the proposed fees are reasonable and typical of similar sites in the area.

DATES: If approved, the new fees would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Ozark-St. Francis National Forest, 605 West Main St., Russellville, Arkansas 72801.

FOR FURTHER INFORMATION CONTACT: Robert Duggan, Recreation Program Manager at 479-964-7238 or Robert.duggan@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108-447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The fees are only proposed at this time and will be determined upon further analysis and public comment. Reasonable fees, paid by users of these sites, will help ensure that the Forest can continue maintaining and improving recreation sites like this for future generations.

As part of this proposal, a Special Recreation Permit for Pleasant Hill Shooting Range is proposed at \$5 per day and \$30 per year. In addition, this proposal would implement new fees at four Off-Highway Vehicle sites: Moccasin Gap, Mill Creek, Brock Creek, and Buckhorn are proposed at \$10 per day per rider, \$20 per 3-day per rider, and \$75 per year per rider. A \$5 day-use fee per vehicle at Gunner Pool and Sam's Throne Recreation Areas would be added to improve services and facilities. The full suite of Interagency passes would be honored.

New fees would provide increased visitor opportunities as well as

increased staffing to address operations and maintenance needs and enhance customer service. Once public involvement is complete, these new fees will be reviewed by the Southern Region Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: April 1, 2022.

Sandra Watts,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2022-07268 Filed 4-5-22; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE**Rural Business-Cooperative Service**

[Docket No: RBS-22-CO-OP-0002]

Inviting Applications for Rural Cooperative Development Grants (RCDG)

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: This Notice announces that the Rural Business-Cooperative Service (Agency) is accepting fiscal year (FY) 2022 applications for the Rural Cooperative Development Grant (RCDG) program, subject to the availability of funding. This notice is being issued in order to allow applicants sufficient time to leverage financing, prepare and submit their applications, and give the Agency time to process applications within FY 2022. The purpose of this program is to provide financial assistance to improve the economic condition of rural areas through cooperative development. Eligible applicants are non-profit corporations and institutions of higher education. An announcement on the website at <https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas> will identify the amount available in FY 2022 for RCDG applications. All applicants are responsible for any expenses incurred in developing their applications.

DATES: Completed applications must be submitted electronically by no later than 11:59 p.m. Eastern Time, June 6, 2022, through [Grants.gov](https://www.grants.gov), to be eligible for grant funding. For instructions on the process of registering your organization as soon as possible to ensure that you are able to meet the electronic application deadline, please review the [Grants.gov](https://www.grants.gov/web/grants/register.html) website at <https://www.grants.gov/web/grants/register.html>. Late applications are not

eligible for funding under this Notice and will not be evaluated.

ADDRESSES: You are encouraged to contact your USDA Rural Development (RD) State Office well in advance of the application deadline to discuss your project and ask any questions about the RCDG program or the application process. Contact information for State Offices can be found at <http://www.rd.usda.gov/contact-us/state-offices>.

Program guidance as well as application and matching funds templates may be obtained at <http://www.rd.usda.gov/programs-services/rural-cooperative-development-grant-program>. To submit an electronic application, follow the instructions for the RCDG funding announcement located at <http://www.grants.gov>.

FOR FURTHER INFORMATION CONTACT: Lisa Sharp, Program Management Division, Rural Business-Cooperative Service, United States Department of Agriculture, 1400 Independence Avenue SW, Mail Stop-3226, Room 5160-South, Washington, DC 20250-3226, (202) 720-1400 or email to lisa.sharp@usda.gov.

SUPPLEMENTARY INFORMATION:**Overview**

Federal Agency: Rural Business-Cooperative Service.

Funding Opportunity Title: Rural Cooperative Development Grants (RCDG).

Announcement Type: Notice of Solicitation of Applications.

Assistance Listing Number: 10.771.

Funding Opportunity Number: RBCS-RCDG-2022.

Date: Application Deadline.

Electronic applications must be received by <http://www.grants.gov> no later than 11:59 p.m. Eastern Time, June 6, 2022, or it will not be considered for funding.

Administrative: The following apply to this Notice:

(i) *Key priorities.* The Agency encourages applicants to consider projects that will advance the following (more details available at <https://www.rd.usda.gov/priority-points>):

- Assisting rural communities recover economically from the impacts of the COVID-19 pandemic, particularly disadvantaged communities;
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

(ii) *Technical assistance.* The application template provides specific, detailed instructions for each item of a

complete application. The Agency emphasizes the importance of including every item and strongly encourages applicants to follow the instructions carefully, using the examples and illustrations in the application template. Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to May 6, 2022. Agency contact information can be found in Section D of this Notice.

(iii) *Hemp related projects.* Please note that no assistance or funding can be provided to a hemp producer unless they have a valid license issued from an approved State, Tribal or Federal plan as defined by the Agriculture Improvement Act of 2018, Public Law 115–334. Verification of valid hemp licenses will occur at the time of award.

(iv) *Persistent poverty counties.* Section 736 of the Consolidated Appropriations Act, 2021, the appropriations act for Fiscal Year 2021 (the “FY 2021 Appropriations Act”), designated funding for projects in Persistent Poverty Counties (PPC). Availability of funding in Persistent Poverty Counties is contingent on the inclusion of a similar provision in the Appropriations Act for Fiscal Year 2022, once enacted (the “FY 2022 Appropriations Act”). Persistent Poverty Counties is defined in Section 736 as “any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and 2007–2011 American Community Survey 5-year average, or any territory or possession of the United States.” Another provision in Section 736 expanded the eligible population in Persistent Poverty Counties to include any county seat of any Persistent Poverty County that has a population that does not exceed the authorized population limit by more than 10 percent. This provision expanded the current 50,000 population limit to 55,000 for only county seats located in Persistent Poverty Counties. Therefore, in the event that the Persistent Poverty County provisions are included in the FY 2022 Appropriations Act, once enacted, applicants and/or beneficiaries of technical assistance services located in Persistent Poverty County seats with populations up to 55,000 (per the 2010 census) would also be eligible.

A. Program Description

1. Purpose of the program. The primary objective of the RCDG program is to improve the economic condition of rural areas through cooperative development. Grants are awarded on a

competitive basis and are available for non-profit corporations and institutions of higher education only. Grant funds may be used to pay for up to 75 percent of the cost of establishing and operating centers for rural cooperative development. Grant funds may be used to pay for 95 percent of the cost of establishing and operating centers for rural cooperative development when the applicant is a college identified as a “1994 Institution” for purposes of the Equity in Educational Land-Grant Status Act of 1994, as defined by 7 U.S.C. 301. The 1994 Institutions are commonly known as Tribal Land Grant Institutions. Centers may have the expertise on staff, or they can contract out for the expertise to assist individuals or entities in the startup, expansion or operational improvement of rural businesses, especially cooperative or mutually-owned businesses.

2. Statutory authority. The RCDG program is authorized under section 310B(e) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932(e)), as amended by the Agriculture Improvement Act of 2018 (Pub. L. 115–334). You are required to comply with the regulations for this program published at 7 CFR part 4284, subparts A and F, which are incorporated by reference in this Notice. Therefore, you should become familiar with these regulations.

3. Definitions. Certain terms relating to the RCDG program that you will need to understand are defined at 7 CFR 4284.3 and 7 CFR 4284.504. In addition, the terms “rural” and “rural area,” defined at section 343(a)(13) of the CONACT (7 U.S.C. 1991(a)(13)), are incorporated by reference, and will be used for this program instead of the definition of “Rural and rural area” currently published at 7 CFR 4284.3. The term “you” referenced throughout this Notice should be understood to mean “you” the applicant. Finally, there has been some confusion about the Agency’s interpretation of the terms “conflict of interest” and “mutually-owned business” because they are not defined in the CONACT or in the regulations used for the program. Therefore, the Agency is clarifying those terms for the purpose of this program as follows:

Conflict of interest—A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of

interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. An example of a conflict of interest occurs when an employee of the grantee, an individual on the grantee’s board of directors, or an immediate family member of either, has the appearance of a professional or personal financial interest in the recipients receiving the benefits or services of the grant.

Mutually-owned business—An organization owned and governed by members who are its consumers, producers, employees, or suppliers.

B. Federal Award Information

Type of Award: Competitive Grant.
Fiscal Year Funds: FY 2022.

Total Funding: Funding is contingent on the passage of the FY 2022 Appropriations Act.

Anticipated Maximum Award: \$200,000.

Anticipated Award Date: September 30, 2022.

C. Eligibility Information

Applicants must meet all of the following eligibility requirements. Applications that fail to meet any of these requirements by the application deadline will be deemed ineligible and will not be evaluated further.

1. Eligible applicants. You must be a nonprofit corporation or an institution of higher education to apply for this program. Public bodies and individuals cannot apply for this program. See 7 CFR 4284.507. You must also meet the following requirements:

(i) At the time of application, each applicant must have an active registration in the System for Award (SAM) before submitting its application in accordance with 2 CFR part 25. In order to register in SAM, entities will be required to create a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at <https://sam.gov/content/entity-registration>. Further information regarding SAM registration and the UEI can be found in section D 2 of this notice.

(ii) An applicant is ineligible if it has been debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549,

“Debarment and Suspension.” The Agency will check the Do Not Pay system at the time of application and also prior to funding any grant award to determine if the applicant has been debarred or suspended. Applicants are responsible for resolving any issues that are reported in the ‘Do Not Pay’ System and if issues are not resolved by deadlines found in this Notice, the Agency may proceed to award funds to other eligible applicants. In addition, an applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt. See 7 CFR 4284.6. Applicants must certify as part of the application that they do not have an outstanding judgment against them.

(iii) The FY 2021 Appropriations Act provided that any corporation that has been convicted of a felony criminal violation under any Federal law within the past 24 months or that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance provided with funds appropriated by the FY 2021 Appropriations Act, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government. It is possible that the FY 2022 Appropriations Act, once enacted, will include a similar prohibition.

(iv) Applications will be deemed ineligible if the application includes any funding restrictions identified under Section D.6(i) or (ii) of this Notice. The inclusion of funding restrictions outlined in Section D.6(i) or (ii) of this Notice precludes the Agency from making a federal award to the applicant.

(v) Applications will be deemed ineligible if the application is deemed incomplete in accordance with the requirements stated in Section C.3.

2. Cost sharing or matching. A match of at least 25 percent of the total project cost is required for the application. (5 percent for 1994 Institutions). See 7 CFR 4284.508. When calculating the matching funds requirement, please round up or down to whole dollars as appropriate. An example of how to calculate your matching funds is as follows:

(i) Take the amount of grant funds requested and divide it by .75. This will provide the total project cost.

Example: \$200,000 (grant amount)/.75 (percentage for use of grant funds) = \$266,667 (total project cost)

(ii) Subtract the amount of grant funds requested from the total project cost. This will provide the matching funds requirement.

Example: \$266,667 (total project cost) – \$200,000 (grant amount) = \$66,667 (matching funds requirement)

(iii) A quick way to confirm the correct amount of matching funds is to take the total project cost and multiply it by .25.

Example: \$266,667 (total project cost) × .25 (maximum percentage of matching funds requirement) = \$66,667 (matching funds requirement)

The applicant must verify that all matching funds are available during the grant period and provide this documentation with your application in accordance with requirements identified in Section D.2.iv.h. If awarded a grant, additional verification documentation may be required to confirm the availability of matching funds.

Other rules for matching funds that you must follow are listed below.

(a) They must be spent on eligible expenses during the grant period.

(b) They must be from eligible sources.

(c) They must be spent in advance or as a pro-rata portion of grant funds being spent.

(d) They must be provided by either the applicant or a third party in the form of cash or an in-kind contribution.

(e) They cannot include board/advisory council member’s time.

(f) They cannot include other Federal grants unless provided by authorizing legislation.

(g) They cannot include cash or in-kind contributions donated outside of the grant period.

(h) They cannot include over-valued, in-kind contributions.

(i) They cannot include any project costs that are ineligible under the RCDG program.

(j) They cannot include any project costs that are restricted or unallowable under 2 CFR part 200, subpart E, and the Federal Acquisition Regulation (for-profits) or successor regulation.

(k) They can include loan funds from a Federal source.

(l) They can include travel and incidentals for board/advisory council members if the organization has

established written policies explaining how these costs are normally reimbursed, including rates. The applicant must include an explanation of this policy in the application or the contributions will not be considered as eligible matching funds.

(m) The applicant must be able to document and verify the number of hours worked and the value associated with any in-kind contribution being used to meet a matching funds requirement.

(n) In-kind contributions provided by individuals, businesses, or cooperatives which are being assisted by you cannot be provided for the direct benefit of their own projects as USDA Rural Development considers this to be a conflict of interest or the appearance of a conflict of interest.

3. Other eligibility requirements. The following apply to this Notice:

(i) *Completeness.* Your application will not be considered for funding if it fails to meet all eligibility criteria by the application deadline or does not provide sufficient information to determine eligibility and scoring. You must include in one submission to the Agency all of the forms and proposal elements as discussed in the program regulation and as clarified further in this Notice. Incomplete applications will not be reviewed by the Agency. For more information on what is required for a complete application, see 7 CFR 4284.510.

(ii) *Purpose eligibility.* Your application must propose the establishment or continuation of a cooperative development center concept. You must use project funds, including grant and matching funds, for eligible purposes only (see 7 CFR 4284.508). In addition, project funds may also be used for programs providing for the coordination of services and sharing of information among the centers (see 7 U.S.C 1932(e)(4)(C)(vi)).

(iii) *Project eligibility.* All project activities must be for the benefit of a rural area.

(iv) *Multiple applications deemed ineligible.* Only one application can be submitted per applicant. If two applications are submitted (regardless of the applicant name) that include the same Executive Director and/or advisory boards or committees of an existing center, both applications will be determined ineligible for funding.

(v) *Grant period.* Your application must include no more than a one-year grant period, or it will not be considered for funding. The grant period should begin no earlier than October 1, 2022, and no later than January 1, 2023.

Applications that request funds for a grant period ending after January 1, 2024, will not be considered for funding. Projects must be completed within a one-year timeframe. Prior approval is needed from the Agency if you are awarded a grant and desire the grant period to begin earlier or later than previously approved.

(vi) *Satisfactory performance.* You must be performing satisfactorily on any outstanding RCDG award to be considered eligible for a new award. Satisfactory performance includes being up-to-date on all financial and performance reports as prescribed in the grant award, and current on all tasks and timeframes for utilizing grant and matching funds as approved in the work plan and budget. If you have any unspent grant funds on RCDG awards prior to fiscal year 2021, your application will not be considered for funding. If your prior award(s) has unspent funds of 50 percent or more than what your approved work plan and budget projected at the time that your Fiscal year 2022 application is being evaluated, your application will not be considered for funding. The Agency will verify the performance status of the applicant's prior awards and make a determination after the FY 2022 application period closes.

(vii) *Duplication of current services.* Your application must demonstrate that you are providing services to new customers or new services to current customers. If your work plan and budget is duplicative of your existing award, your application will not be considered for funding. If your workplan and budget is duplicative of a previous or existing RCDG and/or Socially Disadvantaged Groups Grant (SDGG) award, your application will not be considered for funding. The Agency will make this determination in its sole discretion. Please note that the Agency only allows one active award to a grantee to ensure that there is no duplication of services.

(viii) *Indirect costs.* Your negotiated indirect cost rate approval does not need to be included in your application, but you will be required to provide it if a grant is awarded. Approval for indirect costs that are requested in an application without an approved indirect cost rate agreement is at the discretion of the Agency.

D. Application and Submission Information

1. Address to request application package. For further information, you should contact your State Office at <http://www.rd.usda.gov/contact-us/state-offices>. Program materials may

also be obtained at <http://www.rd.usda.gov/programs-services/rural-cooperative-development-grant-program>.

2. Content and form of application submission. You must submit your application electronically through *Grants.gov*. You are encouraged, but not required to utilize the application template found at <http://www.rd.usda.gov/programs-services/rural-cooperative-development-grant-program>.

(i) *Electronic submission.* An optional-use Agency application template is available online at <http://www.rd.usda.gov/programs-services/rural-cooperative-development-grant-program>. To apply electronically, you must use the *Grants.gov* website at <http://www.Grants.gov>. You may not apply electronically in any way other than through *Grants.gov*.

You can locate the *Grants.gov* downloadable application package for this program by using a keyword, the program name, Assistance Listing Number or the Funding Opportunity Number for this program.

When you enter the *Grants.gov* website, you will find information about applying electronically through the site. Users of *Grants.gov* must already have a Unique Entity Identifier (UEI) number and must also be registered and maintain registration in SAM in accordance with 2 CFR part 25. The UEI is assigned by SAM and replaces the formerly known Dun & Bradstreet D-U-N-S Number. The UEI number must be associated with the correct tax identification number of the RCDG applicant. We strongly recommend that you do not wait until the application deadline date to begin the application process through *Grants.gov*.

You must submit all your application documents electronically through *Grants.gov*. Applications must include electronic signatures. Original signatures may be required if funds are awarded.

After electronically applying through *Grants.gov*, you will receive an automated acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number.

(ii) *Supplemental information.* Your application must contain all the required forms and proposal elements described in 7 CFR 4284.510 and as otherwise described in this Notice. Specifically, your application must include: the required forms as described in 7 CFR 4284.510(b) and the required proposal elements as described in 7 CFR 4284.510(c). If your application is incomplete, it is ineligible to compete for funds. Applications lacking

sufficient information to determine eligibility and scoring will be considered ineligible. Information submitted after the application deadline will not be accepted.

(iii) *Clarifications on forms.*

(a) Your UEI number should be identified in the "Organizational DUNS" field on Standard Form (SF) 424, "Application for Federal Assistance." You must also provide your SAM Commercial and Government Entity (CAGE) Code and expiration date under the applicant eligibility discussion in your proposal narrative. If you do not include the CAGE code and expiration date and the UEI number in your application, it will not be considered for funding.

(b) You no longer must complete the Form SF 424B, "Assurances—Non-Construction Programs" as a part of your application. This information is now collected through your registration or annual recertification in *SAM.gov* through the Financial Assistance General Certifications and Representation.

(c) You can voluntarily fill out and submit the "Survey on Ensuring Equal Opportunity for Applicants," as part of your application if you are a nonprofit organization.

(iv) *Clarifications on proposal elements.*

(a) You must include the title of the project as well as any other relevant identifying information on the Title Page.

(b) You must include a Table of Contents with page numbers for each component of the application to facilitate review.

(c) Your Executive Summary must include the items in 7 CFR 4284.510(c)(3) and discuss the percentage of work that will be performed among organizational staff, consultants, or other contractors. It should not exceed two pages.

(d) Your Eligibility Discussion must cover how you meet the applicant eligibility requirements, matching funds, and other eligibility requirements. It must not exceed two pages.

(e) Your Proposal Narrative must not exceed 40 pages using at least 11-point font and should describe the essential aspects of the project.

(1) You are required to only have one title page for the proposal.

(2) If you list the evaluation criteria on the Table of Contents and then specifically and individually address each criterion in narrative form, it is not necessary for you to include an Information Sheet. Otherwise, the

Information Sheet is required under 7 CFR 4284.510(c)(5)(ii).

(3) You must include the following under Goals of the Project:

(i) A statement that substantiates that the Center will effectively serve rural areas in the United States;

(ii) A statement that the primary objective of the Center will be to improve the economic condition of rural areas through cooperative development;

(iii) A description of the contributions that the proposed activities are likely to make to the improvement of the economic conditions of the rural areas for which the Center will provide services. Expected economic impacts should be tied to tasks included in the work plan and budget; and

(iv) A statement that the Center, in carrying out its activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal government, and State and local governments.

(4) The Agency has established annual performance evaluation measures to evaluate the RCDG program. You must provide estimates on the following performance evaluation measures:

(i) Number of groups assisted who are not legal entities.

(ii) Number of businesses assisted that are not cooperatives.

(iii) Number of cooperatives assisted.

(iv) Number of businesses incorporated that are not cooperatives.

(v) Number of cooperatives incorporated.

(vi) Total number of jobs created as a result of assistance.

(vii) Total number of jobs saved as a result of assistance.

(viii) Number of jobs created for the Center as a result of RCDG funding.

(ix) Number of jobs saved for the Center as a result of RCDG funding.

It is permissible to have a zero in a performance element. When you calculate jobs created, estimates should be based upon actual jobs to be created by your organization because of the RCDG funding or actual jobs to be created by cooperative businesses or other businesses as a result of assistance from your organization. When you calculate jobs saved, estimates should be based only on actual jobs that would have been lost if your organization did not receive RCDG funding or actual jobs that would have been lost without assistance from your organization.

(5) You can also suggest additional performance elements, for example, where job creation or jobs saved may not be a relevant indicator (e.g.,

housing). These additional criteria should be specific, measurable performance elements that could be included in an award document.

(6) You must describe in the application how you will undertake each of the following and prefer that you describe these undertakings within the noted proposal evaluation criteria to reduce duplication in your application. The specific proposal evaluation criterion where you should address each undertaking is noted below.

(i) Take all practicable steps to develop continuing sources of financial support for the Center, particularly from sources in the private sector (should be presented under proposal evaluation criterion x., utilizing the specific requirements of Section E.1.x.);

(ii) Make arrangements for the Center's activities to be monitored and evaluated (should be addressed under proposal evaluation criterion 'viii.' utilizing the specific requirements of Section E.1.viii.); and

(iii) Provide an accounting for the money received by the grantee in accordance with 7 CFR part 4284, subpart F and 2 CFR part 200. This should be addressed under proposal evaluation criterion 'i.', utilizing the specific requirements of Section E.1.i.

(7) You should present the Work Plan and Budget proposal element under proposal evaluation criterion 'viii.', utilizing the specific requirements of Section E.1.viii. of this Notice to reduce duplication in your application.

(8) You should present the Delivery of Cooperative development assistance proposal element under proposal evaluation criterion 'ii', utilizing the specific requirements of Section E.1.ii. of this Notice.

(9) You should present the Qualifications of Personnel proposal element under proposal evaluation criterion 'ix', utilizing the specific requirements of Section E.1.ix. of this Notice.

(10) You should present the Local Support and Future Support proposal elements under proposal evaluation criterion 'x', utilizing the requirements of Section E.1.x. of this Notice.

(11) Your application will not be considered for funding if you do not address all of the proposal evaluation criteria. See Section E.1. of this Notice for a description of the proposal evaluation criteria.

(12) Only appendices A–C will be considered when evaluating your application. You must not include resumes of staff or consultants in the application.

(f) You must certify that there are no current outstanding Federal judgments

against your property and that you will not use grant funds to pay for any judgment obtained by the United States. To satisfy the certification requirement, you should include this statement in your application: “[INSERT NAME OF APPLICANT] certifies that the United States has not obtained an unsatisfied judgment against its property, is not delinquent on the payment of Federal income taxes, or any Federal debt, and will not use grant funds to pay any judgments obtained by the United States.” A separate signature relating to this certification is not required.

(g) You must certify that matching funds will be available at the same time grant funds are anticipated to be spent and that expenditures of matching funds are pro-rated or spent in advance of grant funding, such that for every dollar of the total project cost, not less than the required amount of matching funds will be expended. Please note that this certification is a separate requirement from the Verification of Matching Funds requirement. To satisfy the certification requirement, you should include this statement in your application: “[INSERT NAME OF APPLICANT] certifies that matching funds will be available at the same time grant funds are anticipated to be spent and that expenditures of matching funds shall be pro-rated or spent in advance of grant funding, such that for every dollar of the total project cost, at least 25 cents (5 cents for 1994 Institutions) of matching funds will be expended.” A separate signature relating to this certification is not required.

(h) You must provide documentation in your application to verify all of your proposed matching funds. The documentation must be included in Appendix A of your application and will not count towards the 40-page limitation. Template letters are available for each type of matching funds contribution at: <http://www.rd.usda.gov/programs-services/rural-cooperative-development-grant-program>.

(1) If matching funds are to be provided in cash, the following requirements must be met:

(i) If the matching funds are being provided by the applicant, the application must include a statement verifying (A) the amount of the cash and (B) the source of the cash. You may also provide a bank statement dated 30 days or less from the application deadline date to verify your cash match.

(ii) If the matching funds are being provided by a third-party, the application must include a signed letter from the third party verifying (A) how much cash will be donated and (B) that it will be available corresponding to the

proposed grant period or donated on a specific date within the grant period.

(2) If matching funds are to be provided by an in-kind donation, you must meet the following requirements:

(i) If the in-kind donation is being provided by the applicant, the application must include a signed letter from you or your authorized representative verifying (A) the nature of the goods and/or services to be donated and how they will be used, (B) when the goods and/or services will be donated (*i.e.*, corresponding to the proposed grant period or to specific dates within the grant period), and (C) the value of the goods and/or services. Please note that most applicant contributions for the RCDG program are considered applicant cash match in accordance with this Notice. If you are unsure, please contact your State Office because identifying your matching funds improperly can affect your scoring.

(ii) If the in-kind donation is being provided by a third-Party, the application must include a signed letter from the third party verifying (A) the nature of the goods and/or services to be donated and how they will be used, (B) when the goods and/or services will be donated (*i.e.*, corresponding to the proposed grant period or to specific dates within the grant period), and (C) the value of the goods and/or services.

(3) To ensure that you are identifying and verifying your matching funds appropriately, please note the following:

(i) If you are paying for goods and/or services as part of the matching funds requirement, the expenditure is considered a cash match, and you must verify it as such. Universities must verify the goods and services they are providing to the project as a cash match and the verification must be approved by the appropriate approval official (*i.e.*, sponsored programs office or equivalent).

(ii) If you have already received cash from a third-party (*e.g.*, a foundation) before the start of your proposed grant period, you must verify this as your own cash match and not as a third-party cash match. If you are receiving cash from a third-party during the grant period, then you must verify the cash as a third-party cash match.

(iii) Board resolutions for a cash match must be approved at the time of application.

(iv) You can only consider goods or services for which no expenditure is made as an in-kind contribution.

(v) If a non-profit or another organization contributes the services of affiliated volunteers, they must follow the third-party, in-kind donation

verification requirement for each individual volunteer.

(vi) Expected program income may not be used to fulfill your matching funds requirement at the time you submit your application. However, if you have a contract to provide services in place at the time you submit your application, you can verify the amount of the contract as a cash match.

(vii) The valuation processes used for in-kind contributions does not need to be included in your application, but you must be able to demonstrate how the valuation was derived if you are awarded a grant. The grant award may be withdrawn, or the amount of the grant reduced if you cannot demonstrate how the valuation was derived.

Successful applicants must comply with requirements identified in Section F, Federal Award Administration Information.

3. System for Awards Management (SAM) and assigned Unique Entity Identifier (UEI). You must be registered in SAM before submitting your application and provide a valid UEI, unless you are determined exempt under 2 CFR 25.110(b), (c) or (d)).

(i) You may register in SAM at no cost at <https://www.sam.gov/SAM/>. You must provide your SAM CAGE Code and expiration date in the application materials. When registering in SAM, you must indicate you are applying for a Federal financial assistance project or program or are currently the recipient of funding under any Federal financial assistance project or program, and

(ii) The SAM registration must remain active with current information at all times while RBCS is considering an application or while a Federal grant award or loan is active. To maintain the registration in the SAM database the applicant must review and update the information in the SAM database annually from the date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(iii) If you have not fully complied with all applicable UEI and SAM requirements, the Agency may determine that the applicant is not qualified to receive a Federal award and the Agency may use that determination as a basis for making an award to another applicant. Please refer to Section F.2. of this Notice for additional submission requirements that apply to grantees selected for this program.

4. Submission date and time. Completed applications must be submitted electronically no later than 11:59 p.m. Eastern Time, June 6, 2022, through *Grants.gov*, to be eligible for grant funding. Please review the *Grants.gov* website at <https://www.grants.gov/web/grants/register.html> for instructions on the process of registering your organization as soon as possible to ensure that you can meet the electronic application deadline. *Grants.gov* will not accept applications submitted after the deadline.

The Agency will not solicit or consider new scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification on materials contained in the submitted application. See the Application Template for a full discussion of each item. For requirements of completed grant applications, refer to Section D of this Notice.

5. Intergovernmental review of applications. Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many States have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain a SPOC, please see the White House website: <https://www.whitehouse.gov/wp-content/uploads/2020/04/SPOC-4-13-20.pdf>. If your State has a designated point of contact (SPOC), you may submit a copy of the application directly to the SPOC for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application. If your State has not established a SPOC, or if you do not want to submit a copy of the application to the SPOC for a review, our State Offices will submit your application to the SPOC or other appropriate agency or agencies.

6. Funding restrictions.

(i) Project funds, including grant and matching funds, cannot be used for ineligible grant purposes (see 7 CFR 4284.10). Also, you shall not use project funds for the following:

(A) To purchase, rent, or install laboratory equipment or processing machinery;

(B) To pay for the operating costs of any entity receiving assistance from the Center;

(C) To pay costs of the project where a conflict of interest exists;

(D) To fund any activities prohibited by 2 CFR part 200; or

(E) To fund any activities considered unallowable by 2 CFR part 200, subpart E, "Cost Principles," and the Federal Acquisition Regulation (for-profits) or successor regulations.

(ii) In addition, your application will not be considered for funding if it does any of the following:

(A) Focuses assistance on only one cooperative or mutually-owned business;

(B) Requests more than the maximum grant amount; or

(C) Proposes ineligible costs that equal more than 10 percent of total project costs. The ineligible costs will NOT be removed at this stage to proceed with application processing. For purposes of this determination, the grant amount requested plus the matching funds amount constitutes the total project costs.

(iii) We will consider your application for funding if it includes ineligible costs of 10 percent or less of total project costs, if the remaining costs are determined eligible otherwise. However, if your application is successful, those ineligible costs must be removed and replaced with eligible costs before the Agency will make the grant award, or the amount of the grant award will be reduced accordingly. If we cannot determine the percentage of ineligible costs, your application will not be considered for funding.

7. Other submission requirements. You should not submit your application in more than one format. You must submit your application electronically. Note that we cannot accept applications through mail or courier delivery, in-person delivery, email, or fax. To submit an application electronically, you must follow the instruction for this funding announcement at <http://www.grants.gov>.

E. Application Review Information

The State Offices will review applications to determine if they are eligible for assistance based on requirements in 7 CFR part 4284, subparts A and F, this Notice, and other applicable Federal regulations. If determined eligible, your application will be scored by a panel of USDA employees in accordance with the point allocation specified in this Notice. Applications will be funded in rank order until the funding limitation has been reached. Applications that cannot be fully funded may be offered partial funding at the Agency's discretion.

1. Scoring criteria. Scoring criteria will follow statutory criteria in 7 U.S.C. 1932(e) and the criteria published in the

program regulations at 7 CFR 4284.513 as described below. You should also include information as described in Section D.2.iv.e.6. if you choose to address these items under the scoring criteria. Evaluators will base scores only on the information provided or cross-referenced by page number in each individual evaluation criterion. The maximum amount of points available is 110. Newly established or proposed Centers that do not yet have a track record on which to evaluate the following criteria should refer to the expertise and track records of staff or consultants expected to perform tasks related to the respective criteria. Proposed or newly established Centers must be organized well-enough at the time of application to address their capabilities for meeting these criteria.

(i) Administrative capabilities (maximum score of 10 points). A panel of USDA employees will evaluate your demonstrated track record in carrying out activities in support of development assistance to cooperatively and mutually owned businesses. At a minimum, you must discuss the following administrative capabilities:

(a) Financial systems and audit controls;

(b) Personnel and program administration performance measures;

(c) Clear written rules of governance; and

(d) Experience administering Federal grant funding no later than the last 5 years, including but not limited to past RCDG awards. Please list the name of the Federal grant program(s), the amount(s), and the date(s) of funding received.

You will score higher on this criterion if you can demonstrate that the Center has independent governance. For applicants that are universities or parent organizations, you should demonstrate that there is a separate board of directors for the Center.

(ii) Technical assistance and other services (maximum score of 10 points). A panel of USDA employees will evaluate your demonstrated expertise no later than the last 5 years in providing technical assistance and accomplishing effective outcomes in rural areas to promote and assist the development of cooperatively and mutually owned businesses. At a minimum, you must discuss:

(a) Your potential for delivering effective technical assistance;

(b) The types of assistance provided;

(c) The expected effects of that assistance;

(d) The sustainability of organizations receiving the assistance; and

(e) The transferability of your cooperative development strategies and focus to other areas of the United States.

A chart or table showing the outcomes of your demonstrated expertise based upon the performance elements listed in Section D.2.iv.e.4. or as identified in your award document on previous RCDG awards is recommended. At a minimum, please provide information for FY 2018 to FY 2020 awards. You may also include any performance outcomes from a FY 2021 RCDG award. We prefer that you provide one chart or table for each award year. The intention here is for you to provide actual performance numbers based upon award years (fiscal year) even though your grant period for the award was implemented during the next calendar or fiscal year. Please provide a narrative explanation if you have not previously received a RCDG award.

You will score higher on this criterion if you provide more than 3 years of outcomes and can demonstrate that the organizations you assisted within the last 5 years are sustainable. Additional outcome information should be provided on RCDG grants awarded before FY 2018. Please describe specific project(s) when addressing items a–e of paragraph ii. To reduce duplication, descriptions of specific projects and their impacts, outcomes and roles can be discussed once under criterion ii or iii. However, you must cross-reference the information under the other criterion.

(iii) Economic development (maximum score of 10 points). A panel of USDA employees will evaluate your demonstrated ability to facilitate:

(a) Establishment of cooperatives or mutually owned businesses;

(b) New cooperative approaches (*i.e.*, organizing cooperatives among underserved individuals or communities; an innovative market approach; a type of cooperative currently not in your service area; a new cooperative structure; novel ways to raise member equity or community capitalization; conversion of an existing business to cooperative ownership); and

(c) Retention of businesses, generation of employment opportunities or other factors, as applicable, that will otherwise improve the economic conditions of rural areas.

You will score higher on this criterion if you provide quantifiable economic measurements showing the impacts of your past development projects no later than the last five (5) years and identify your role in the economic development outcomes.

(iv) Past performance in establishing legal business entities (maximum score

of 10 points). A panel of USDA employees will evaluate your demonstrated past performance in establishing legal cooperative business entities and other legal business entities since October 1, 2016. Provide the name of the organization(s) established, the date(s) of formation, and your role(s) in assisting with the incorporation(s) under this criterion. In addition, documentation verifying the establishment of legal business entities must be included in Appendix C of your application and will not count against the 40-page limit for the narrative. The documentation must include proof that organizational documents were filed with the Secretary of State's Office (*i.e.*, Certificate of Incorporation or information from the State's official website naming the entity established and the date of establishment); or if the business entity is not required to register with the Secretary of State, a certification from the business entity that a legal business entity has been established and when. Please note that you are not required to submit articles of incorporation to receive points under this criterion. You will score higher on this criterion if you have established legal cooperative businesses. If your State does not incorporate cooperative business entities, please describe how the established business entity operates like a cooperative. Due to extenuating circumstances of COVID-19, the Agency will utilize information in the narrative to score this criterion. Documentation to verify past performance in establishing legal entities will be required before an award is made.

(v) Networking and regional focus (maximum score of 10 points). A panel of USDA employees will evaluate your demonstrated commitment to:

(a) Networking with other cooperative development centers, and other organizations involved in rural economic development efforts, and

(b) Developing multi-organization and multi-State approaches to addressing the economic development and cooperative needs of rural areas.

You will score higher on this criterion if you can demonstrate the outcomes of your multi-organizational and multi-State approaches. Please describe the project(s), partners and the outcome(s) that resulted from the approach.

(vi) Commitment (maximum score of 10 points). A panel of USDA employees will evaluate your commitment to providing technical assistance and other services to underserved and economically distressed areas in rural areas of the United States. You will score higher on this criterion if you define and describe the underserved

and economically distressed areas within your service area, provide economic statistics, and identify past or current projects within or affecting these areas, as appropriate. To the extent that the Persistent Poverty Counties provisions from the FY 2021 Appropriations Act are included in the FY 2022 Appropriations Act, once enacted, projects identified in the work plan and budget that are located in Persistent Poverty Counties, will score even higher on this criterion.

(vii) Matching funds (maximum score of 10 points). A panel of USDA employees will evaluate your commitment for the 25 percent (5 percent for 1994 Institutions) matching funds requirement. A chart or table should be provided to describe all matching funds being committed to the project. However, formal documentation to verify all the matching funds must be included in Appendix A of your application. You will be scored on the total amount and how you identify your matching funds.

(a) If you meet the 25 percent (5 percent for 1994 Institutions) matching funds requirement, points will be assigned as follows:

(1) In-kind only—1 point;

(2) Mix of in-kind and cash—3–4 points (maximum points will be awarded if the ratio of cash to in-kind is 30 percent or more); or

(3) Cash only—5 points.

(b) If you exceed the 25 percent (5 percent for 1994 Institutions) matching funds requirement, points will be assigned as follows:

(1) In-kind only—2 points;

(2) Mix of in-kind and cash—6–7 points (maximum points will be awarded if the ratio of cash to in-kind is 30 percent or more); or

(3) Cash only—up to 10 points.

(viii) Work plan/budget (maximum score of 10 points). A panel of USDA employees will evaluate your work plan for detailed actions and an accompanying timetable for implementing the proposal. The budget must present a breakdown of the estimated costs associated with cooperative and business development activities as well as the operation of the Center and allocate these costs to each of the tasks to be undertaken. Matching funds as well as grant funds must be accounted for in the budget.

You must discuss at a minimum:

(a) Specific tasks (whether it be by type of service or specific project) to be completed using grant and matching funds;

(b) How customers will be identified;

(c) Key personnel; and

(d) The evaluation methods to be used to determine the success of specific tasks and overall objectives of Center operations. Please provide qualitative methods of evaluation. For example, evaluation methods should go beyond quantitative measurements of completing surveys or number of evaluations.

You will score higher on this criterion if you present a clear, logical, realistic, and efficient work plan and budget.

(ix) Qualifications of those performing the tasks (maximum score of 10 points). A panel of USDA employees will evaluate your application to determine if the personnel expected to perform key tasks have experience:

(a) Developing positive solutions for complex cooperative development and/or marketing problems; and

(b) Conducting accurate feasibility studies, business plans, marketing analysis, or other activities relevant to your success as determined by the tasks identified in the work plan.

Your application must indicate whether the personnel expected to perform the tasks are full/part-time employees of your organization or are contract personnel. You will score higher on this criterion if you demonstrate commitment and availability of qualified personnel expected to perform the tasks.

(x) Local and future support (maximum score of 10 points). A panel of USDA employees will evaluate your application for local and future support. Support should be discussed directly within the response to this criterion.

(a) Discussion of local support should include previous and/or expected local support and plans for coordinating with other developmental organizations in the proposed service area or with state and local government institutions. You will score higher if you demonstrate strong support from potential beneficiaries and formal evidence of intent to coordinate with other developmental organizations. You may also submit a maximum of 10 letters of support or intent to coordinate with the application to verify your discussion. These letters should be included in Appendix B of your application and will not count against the 40-page limit for the narrative. Due to the extenuating circumstances of COVID-19, the Agency will utilize information in the narrative to score this criterion. Documentation to verify local support will be required before an award is made.

(b) Discussion on future support will include your vision for funding operations in future years. You should document:

(1) New and existing funding sources that support your goals;

(2) Alternative funding sources that reduce reliance on Federal, State, and local grants; and

(3) The use of in-house personnel for providing services versus contracting out for that expertise. Please discuss your strategy for building in-house technical assistance capacity.

You will score higher if you can demonstrate that your future support will result in long-term sustainability of the Center, including the use and building of in-house personnel for providing services.

(xi) Administrator Discretionary Points (maximum of 10 points). The Administrator may choose to award up to 10 points to an eligible non-profit corporation or institution of higher education that has never previously been awarded an RCDG grant or whose application seeks to advance the key priorities addressed in the Supplemental Section of this notice. Data sources for the key priorities are found at: <https://www.rd.usda.gov/priority-points>. Points will be assigned as follows:

- I. Applicant has never received a RCDG award—5 points
- II. Applicant seeks to advance one or more key priorities addressed in the Supplemental Section of this notice—5 points

2. Review and selection process. The State Offices will review applications to determine if they are eligible for assistance based on requirements in 7 CFR part 4284, subparts A and F, this Notice, and other applicable Federal regulations. If determined eligible, your application will be scored by a panel of USDA employees in accordance with the point allocation specified in this Notice. The Administrator may choose to award up to 10 Administrator priority points based on criterion (xi) in section E.1. of this Notice. These points will be added to the cumulative score for a total possible score of 110. Applications will be funded in highest ranking order until the appropriations funding limitation for the RCDG program has been reached. Applications that cannot be fully funded may be offered partial funding at the Agency's discretion. If your application is evaluated, but not funded, it will not be carried forward into the competition for any subsequent fiscal year program funding. Successful applicants must comply with requirements identified in Section F, Federal Award Administration Information.

F. Federal Award Administration Information

1. Federal award notices. If you are selected for funding, you will receive a signed notice of Federal award by postal or electronic mail from the State Office where your application was submitted, containing instructions and requirements necessary to proceed with execution and performance of the award. You must comply with all applicable statutes, regulations, and notice requirements before the grant award will be funded.

If you are not selected for funding, you will be notified in writing via postal or electronic mail and informed of any review and appeal rights. See 7 CFR part 11 for USDA National Appeals Division (NAD) procedures. Note that rejected applicants that are successful in their NAD appeals will not receive funding in the event that all FY 2022 RCDG program funding has already been awarded and obligated to other applicants.

2. Administrative and national policy requirements. Additional requirements that apply to grantees selected for this program can be found in 7 CFR part 4284, subpart F; the Grants and Agreements regulations of the Department of Agriculture codified in 2 CFR parts 180, 200, 400, 415, 417, 418, 421; 2 CFR parts 25 and 170; and 48 CFR part 31 (Subpart 31.2), and successor regulations to these parts.

In addition, all recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)).

The following additional requirements apply to grantees selected for awards within this program:

- (i) Execution of an Agency-approved Grant Agreement;
- (ii) Acceptance of a written Letter of Conditions; and submission of the following Agency forms:
 - (i) Form RD 1940–1, “Request for Obligation of Funds.”
 - (ii) Form RD 1942–46, “Letter of Intent to Meet Conditions.”
 - (iii) SF LLL, “Disclosure of Lobbying Activities,” if applicable.

3. Reporting. After grant approval and through grant completion, you will be required to provide an SF–425, “Federal Financial Report,” and a project performance report on a semiannual

basis (due 30 working days after the end of the semiannual period). The project performance reports shall include the following:

- (i) A comparison of actual accomplishments to the objectives established for that period;
- (ii) Reasons why established objectives were not met, if applicable;
- (iii) Reasons for any problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and
- (iv) Objectives and timetable established for the next reporting period.

The grantee must provide a final project and financial status report within 90 days after the expiration or termination of the grant with a summary of the project performance reports and final deliverables to closeout a grant in accordance with 2 CFR 200.344.

G. Agency Contacts

If you have questions about this Notice, please contact the appropriate State Office at <http://www.rd.usda.gov/contact-us/state-offices>. Program guidance as well as application and matching funds templates may be obtained at <http://www.rd.usda.gov/programs-services/rural-cooperative-development-grant-program>. You may also contact National Office Program Management Division: RCDG Program Lead, cpgrants@wdc.usda.gov, or call the main line at 202–720–1400. Applicants must follow the instructions for the RCDG funding announcement located at <http://www.grants.gov>.

H. Other Information

1. Paperwork Reduction Act. In accordance with the Paperwork Reduction Act, the paperwork burden associated with this Notice has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0006.

2. National Environmental Policy Act. All funding activities under this notice must comply with the National Environmental Policy Act (NEPA), and its implementing regulations in 7 CFR part 1970. All recipients under this Notice are subject to the requirements of 7 CFR part 1970. However, technical assistance awards under this Notice are classified as a Categorical Exclusion according to 7 CFR 1970.53(b), and usually do not require any additional

documentation. We have determined that this notice does not constitute a major Federal action significantly affecting the quality of the human environment.

The Agency will review each grant application to determine its compliance with 7 CFR part 1970. The applicant may be asked to provide additional information or documentation to assist the Agency with this determination. A review for NEPA compliance is required prior to the award of grant funds.

3. Civil Rights Compliance Requirements. All grants made under this Notice are subject to Title VI of the Civil Rights Act of 1964 as required by USDA (7 CFR part 15, subpart A) and Section 504 of the Rehabilitation Act of 1973.

4. Nondiscrimination Statement. In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotope, American Sign Language) should contact the responsible Mission Area, agency or staff office, the USDA's TARGET Center at (202) 720-2600 (voice and TTY) or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at USDA Discrimination Complaint Form, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights

violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or

(2) *Fax:* (833) 256-1665 or (202) 690-7442; or

(3) *Email:* program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2022-07311 Filed 4-5-22; 8:45 am]

BILLING CODE 3410-XY-P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS-21-CF-0020]

Community Facilities Technical Assistance and Training Grant Program for Fiscal Year 2022; Correction

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of solicitation of applications (NOSA); correction.

SUMMARY: The Rural Housing Service (RHS), a Rural Development agency of the United States Department of Agriculture, is correcting a notice of solicitation of applications (NOSA) that was published in the **Federal Register** on March 14, 2022, entitled, "Community Facilities Technical Assistance and Training Grant Program for Fiscal Year 2022." The notice announced that it is accepting applications under the Community Facilities Technical Assistance and Training (TAT) Grant program for fiscal year (FY) 2022. The purpose of this notice is to correct the application deadline dates published in the **DATES** section of the NOSA published in the **Federal Register** on March 14, 2022.

DATES: April 6, 2022.

FOR FURTHER INFORMATION CONTACT:

Nathan Chitwood, Asset Risk Management Specialist, CF Guaranteed Loan Division Department, Community Facilities Programs, Rural Development, Rural Housing Service, United States Department of Agriculture, via email: Nathan.Chitwood@usda.gov or telephone: (573) 876-0965.

SUPPLEMENTARY INFORMATION:

Corrections

In the **Federal Register** of March 14, 2022, in FR Doc. 2022-05080 (87 FR 14238), make the following corrections:

(1) In the second column of page 14238, amend the **DATES** section to read as follows:

DATES: Completed applications must be submitted using one of the following methods:

- *Paper submissions:* The Agency must receive applications in paper, postmarked and mailed, shipped, or sent overnight by 4:00 p.m. local time on May 26, 2022. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX), electronic mail, and postage due applications will not be accepted. The application dates and times are firm. The Agency will not consider any application received after the deadline.

- *Electronic submissions:* Electronic applications must be submitted via <https://www.grants.gov> by 11:59 p.m. Eastern Daylight Savings Time on May 23, 2022.

Prior to official submission of applications, applicants may request application guidance from the Agency, as long as such requests are made prior to May 17, 2022. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis.

The Agency will not solicit or consider scoring nor eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

Additional information about this solicitation of applications can be found on the *Grants.gov* website at <https://www.grants.gov>.

The application deadlines are as follows:

1. Applicants may request application guidance from the Agency, as long as such requests are made prior to May 17, 2022.

2. Applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to May 17, 2022.

3. Electronic applications must be submitted via <https://www.grants.gov> by 11:59 p.m. Eastern Daylight Savings Time on May 23, 2022.

4. The Agency must receive applications in paper, postmarked, and

mailed, shipped, or sent overnight by May 26, 2022, 4 p.m., local time.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2022-07259 Filed 4-5-22; 8:45 am]

BILLING CODE 3410-XV-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the California Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of web briefings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the California Advisory Committee (Committee) will hold a series of web briefings on the dates and times listed below for the purpose of gathering testimony and public comment on their current project on AB5 and gig worker rights.

DATES: The briefings will take place via Webex on:

- Panel 3: Monday, May 16, 2022, from 1:30 a.m.–4:00 p.m. Pacific Time
 - Panel 4: Monday, May 23, 2022, from 1:30 a.m.–4:00 p.m. Pacific Time
- Panel 3—Public Webex Registration
Link: <https://tinyurl.com/mrfyk6xn>
Panel 4—Public Webex Registration
Link: <https://tinyurl.com/mv6r6jc2>

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at bpeery@usccr.gov or by phone at (202) 701-1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public WebEx registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the

conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at bpeery@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701-1376.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: https://www.facadatabase.gov/FACA/FACA_PublicViewCommitteeDetails?id=a10t0000001gzkUAAQ.

Please click on the “Meeting Details” and “Documents” links. Persons interested in the work of this Committee are also directed to the Commission’s website, <http://www.usccr.gov>, or may contact the Regional Programs Unit office at the above email address.

Agenda

- I. Welcome & Opening Remarks
- II. Panelist Testimony
- III. Committee Q&A
- IV. Public Comment
- V. Adjournment

Dated: April 1, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022-07262 Filed 4-5-22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, April 8, 2022, 12 p.m. EST.

ADDRESSES: Meeting to take place virtually and is open to the public via livestream on the Commission’s YouTube page: <https://www.youtube.com/user/USCCR/videos>.

FOR FURTHER INFORMATION CONTACT:

Angelia Rorison: 202-376-8371; publicaffairs@usccr.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Government in Sunshine Act (5 U.S.C. 552b), the Commission on Civil Rights is holding a meeting to discuss the Commission’s business for the month of January. This

business meeting is open to the public. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, April 8, 2022, is <https://www.streamtext.net/player?event=USCCR>. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

Meeting Agenda

- I. Approval of Agenda
- II. Business Meeting
 - A. Presentations by State Advisory Committee Chairs on Released Reports and Memorandums
 - B. Discussion and Vote on Advisory Committee Appointments
 - C. Discussion on Status of SAC appointments and Committee Assignments
 - D. Discussion on Status of FY 2023 and 2024 Topics and Committee Assignments
 - E. Discussion on AI 9-1: Appropriate Uses of Commission Stationery
 - F. Management and Operations
 - Staff Director’s Report
- III. Adjourn Meeting

Dated: April 4, 2022.

Angelia Rorison,

USCCR Media and Communications Director.

[FR Doc. 2022-07412 Filed 4-4-22; 11:15 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Connecticut Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Connecticut Advisory Committee to the U.S. Commission on Civil Rights will hold a fourth briefing via web conference or phone call on Thursday, April 7, 2022, at 2:00 p.m. (ET). The purpose of the web conference is for the Committee to review and vote on an interim advisory memorandum on zoning.

DATES: April 7, 2022, Thursday, at 2:00 p.m. (ET):

Join by Web Conference: WebEx link:

<https://tinyurl.com/2p9xhe7m>;

password, if needed: USCCR-CT

Join by Phone Only, Dial: 1-800-360-9505; Access Code: 2760 985 0896#

FOR FURTHER INFORMATION CONTACT:

Barbara Delaviez at ero@usccr.gov or by phone at 202-539-8246.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the WebEx link and/or phone number/access code above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing, may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the call-in number found through registering at the web links provided for these meetings.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Barbara de La Viez at ero@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (202) 539-8246. Records and documents discussed during the meeting will be available for public viewing as they become available at www.facadatabase.gov. Persons interested in the work of this advisory committee are advised to go to the Commission's website, www.usccr.gov, or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Thursday, April 7, 2022, at 2:00 p.m. (ET)

- I. Welcome and Roll Call
- II. Review and Vote on Interim Memo on Zoning
- III. Public Comment
- IV. Next Steps
- V. Adjournment

Dated: March 31, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022-07199 Filed 4-5-22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the California Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that

the California Advisory Committee (Committee) will hold a series of meetings via web video conference on the dates and times listed below for the purpose of discussing their public panels on AB5 and gig worker rights in California.

DATES: These meetings will be held on:

- Monday, May 2, 2022, from 2:00 p.m.–3:30 p.m. Pacific Time
- Wednesday, June 15, 2022, from 2:00 p.m.–3:30 p.m. Pacific Time

Monday, May 2nd WEBEX
REGISTRATION LINK: <https://tinyurl.com/ycyb4cbu>

Wednesday, June 15th WEBEX
REGISTRATION LINK: <https://tinyurl.com/3sbzj934>

FOR FURTHER INFORMATION CONTACT:

Brooke Peery, Designated Federal Officer (DFO), at bpeery@usccr.gov or by phone at (202) 701-1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public WebEx registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at bpeery@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701-1376.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: <https://www.facadatabase.gov/FACA/>

FACAPublicViewCommitteeDetails?id=a10t000001gzkUAAQ.

Please click on the “Meeting Details” and “Documents” links. Persons interested in the work of this Committee are also directed to the Commission’s website, <http://www.usccr.gov>, or may contact the Regional Programs Unit office at the above email address.

Agenda

- I. Welcome & Roll Call
- II. Approval of Minutes
- III. Committee Discussion
- IV. Public Comment
- V. Adjournment

Dated: April 1, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022-07265 Filed 4-5-22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-18-2022]

Approval of Subzone Status; Kaiser Premier LLC, Fort Morgan, Colorado

On February 9, 2022, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the City and County of Denver, grantee of FTZ 123, requesting subzone status subject to the existing activation limit of FTZ 123, on behalf of Kaiser Premier LLC, in Fort Morgan, Colorado.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (87 FR 8563, February 15, 2022). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 123J was approved on March 31, 2022, subject to the FTZ Act and the Board’s regulations, including Section 400.13, and further subject to FTZ 123’s 858-acre activation limit.

Dated: March 31, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022-07216 Filed 4-5-22; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**Bureau of Industry and Security**

[Docket No. 220217–0051]

RIN 0694–XC089

Request for Public Comments on Supply Chain Issues To Support the U.S.-EU Trade and Technology Council Secure Supply Chains Working Group**AGENCY:** Bureau of Industry and Security, U.S. Department of Commerce.**ACTION:** Notice of request for public comments.

SUMMARY: The Bureau of Industry and Security (BIS) requests public comments regarding how to advance supply chain resilience and security in key sectors: Semiconductors; solar photovoltaics;¹ critical minerals and materials including rare earth magnets,² lithium-ion batteries,³ and material inputs to semiconductors;⁴ and pharmaceuticals⁵ to inform the work of the United States-European Union (EU) Trade and Technology Council (TTC) Secure Supply Chains Working Group. The Working Group is tasked with increasing transparency of supply and demand, mapping respective existing sectoral capabilities, exchanging information on policy measures and research and development priorities, and cooperating on strategies to promote supply chain resilience and diversification.

DATES: The due date for filing comments is May 23, 2022.

ADDRESSES: *Submissions:* You may submit comments, identified by docket number BIS–2021–0046 or RIN 0694–XC089, through the *Federal eRulemaking Portal:* <https://www.regulations.gov>. To submit comments via <https://www.regulations.gov>, enter the docket number BIS–2021–0046 on the home page and click “Search.” The site will provide a search results page listing all documents associated with this docket. Find a reference to this notice and click the button entitled “Comment.” For further information on using <https://www.regulations.gov>, please consult the resources provided on the website by clicking on “FAQ.” For further

information regarding required comment formatting, please see the Solicited Written Comments and Requirements for Written Comments sections below.

FOR FURTHER INFORMATION CONTACT:

Kevin Coyne, U.S.-EU Trade and Technology Council Secure Supply Chains Working Group, Bureau of Industry and Security, at 202–482–4933, ttc_secure_supply_chains@doc.gov.

SUPPLEMENTARY INFORMATION:**Background**

On June 15, 2021, President Joe Biden and European Commission President Ursula von der Leyen launched the U.S.-EU Trade and Technology Council at the U.S.-EU Summit in Brussels, Belgium. Together, the United States and the European Union account for a quarter of global trade and almost half of global gross domestic product, with U.S.-EU two-way trade in goods and services amounting to \$1.1 trillion in 2019. In support of the continuing growth of U.S.-EU trade and cooperation, the TTC serves as a forum for the United States and the European Union to coordinate approaches to key global trade, economic, and technology issues, and to deepen transatlantic trade and economic relations based on shared democratic values.

The main goals of the TTC are to expand and deepen bilateral trade and investment; avoid new technical barriers to trade; cooperate on key policies regarding technology, digital issues and supply chains; support collaborative research; cooperate on the development of compatible and international standards; cooperate on regulatory policy and enforcement; and promote innovation and leadership by U.S. and EU firms. The TTC’s ten working groups provide a framework for tackling challenges and advancing work aligned with some of our shared trade and technology priorities. These include cooperation on technology standards; global trade challenges and supply chain security; climate and clean technology; Information and Communications Technology (ICT) security and competitiveness; data governance and technology platforms; the misuse of technology threatening security and human rights; export controls; investment screening; and access to, and use of, digital technologies by small and medium enterprises.

On September 29, 2021, the U.S.-EU TTC met for the first time. The United States and the European Union reaffirmed the TTC’s objectives to coordinate approaches to key global

technology, economic, and trade issues; to deepen transatlantic trade and economic relations; and base policies on shared democratic values. Under the TTC’s Secure Supply Chains Working Group, the United States and the European Union seek to maintain close cooperation on resilient and trusted supply chains that will foster common economic and security goals and strengthen capacities to respond decisively to international disasters and emergencies.

With regard to semiconductors, on September 29, 2021, the United States and the European Union released a statement as part of the TTC, which affirmed the importance of promoting transparency in the semiconductor supply chain in partnership with industry and all relevant stakeholders, jointly identifying gaps and vulnerabilities, mapping capacity in the semiconductor value chain, strengthening our domestic semiconductor ecosystems, avoiding a subsidy race to the bottom, and reducing strategic dependencies throughout the supply chain through diversification and increased investment.

Alongside the dedicated track on semiconductors, the Secure Supply Chains Working Group’s initial focus is on solar photovoltaics, critical minerals and materials, and pharmaceuticals. In connection with these sectors, the Secure Supply Chains Working Group seeks to:

- a. Increase visibility and transparency of supply and demand;
- b. map respective existing sectoral capabilities;
- c. exchange information on policy measures and research and development priorities; and
- d. cooperate on strategies to promote supply chain resilience, security, and diversification.

Solicited Written Comments

BIS welcomes public comments on how best to achieve the four primary tasks of the Secure Supply Chains Working Group described above. While BIS invites input from all interested parties, it is particularly interested in obtaining information from foreign and domestic entities that actively participate in semiconductors, solar photovoltaics, critical minerals and materials, and pharmaceuticals supply chains. Interested parties are invited to submit written comments, data, analyses, or information pertinent to this request to BIS no later than May 23, 2022.

¹ Solar photovoltaics include materials and production tools for the manufacturing of solar components.

² Critical minerals include neodymium and dysprosium.

³ Critical minerals include lithium, cobalt, class 1 nickel, manganese, and graphite.

⁴ Critical minerals include gallium and germanium.

⁵ Drug and Biologic Essential Medicines, Medical Countermeasures, and Critical Inputs.

Requirements for Written Comments

The <https://www.regulations.gov> website allows users to provide comments by filling in a “Type Comment” field, or by attaching a document using an “Upload File” field. The Department prefers that comments be provided in an attached document. The Department prefers supplemental submissions in Microsoft Word (.doc files) or Adobe Acrobat (.pdf files). If the submission is in an application format other than Microsoft Word, Microsoft Excel, or Adobe Acrobat, please indicate the name of the application in the “Type Comment” field. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter within the comments. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file, so that the submission consists of one supplemental file instead of multiple additional files. Comments (both public comments and non-confidential versions of comments containing business confidential information) will be placed in the docket and open to public inspection. Comments may be viewed on <https://www.regulations.gov> by entering docket number BIS–2021–0046 in the search field on the home page.

All filers should name their files using the name of the person or entity submitting the comments. Anonymous comments are also accepted. Communications from agencies of the United States Government will not be made available for public inspection. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and refer to the specific legal authority claimed, and provide a non-confidential version of the submission. The non-confidential version of the submission will be placed in the public file on <https://www.regulations.gov>. For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC.” Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The non-confidential version must be clearly marked “PUBLIC.” The file name of the non-confidential version should begin with the character “P.” The “BC” and “P” should be followed by the name of the person or entity submitting the

comments or rebuttal comments. If a public hearing is held in support of this assessment, a separate **Federal Register** notice will be published providing the date and information about the hearing.

BIS does not maintain a separate public inspection facility. Requesters should first view the BIS’s web page, which can be found at <https://efoia.bis.doc.gov/> (see “Electronic FOIA” heading). If requesters cannot access the website, they may call 202–482–0795 for assistance. The records related to this assessment are made accessible in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 through 4.11).

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2022–07211 Filed 4–5–22; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–820]

Raw Honey From Ukraine: Termination of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on a withdrawal of the antidumping duty (AD) petition on raw honey from Ukraine by the American Honey Producers Association and the Sioux Honey Association (collectively, the petitioners), we are terminating this less-than-fair-value (LTFV) investigation.

DATES: Applicable April 6, 2022.

FOR FURTHER INFORMATION CONTACT: Jasun Moy, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8194.

SUPPLEMENTARY INFORMATION:

Background

On April 21, 2021, Commerce received an AD petition concerning imports of raw honey from Ukraine, filed in proper form by the petitioners.¹ On May 11, 2021, Commerce initiated the AD investigation on raw honey from Ukraine.² On November 23, 2021,

¹ See Petitioners’ Letter, “Raw Honey from Argentina, Brazil, India, Ukraine and the Socialist Republic of Vietnam—Petition for the Imposition of Antidumping Duties,” dated April 21, 2021.

² See *Raw Honey from Argentina, Brazil, India, Ukraine, and the Socialist Republic of Vietnam:*

Commerce published its preliminary determination in the LTFV investigation of raw honey from Ukraine, in which we also postponed the final determination.³ On March 2, 2022, Commerce tolled all activities and deadlines by 90 days in this investigation in light of events occurring in Ukraine, thereby extending the deadline for the final determination until July 6, 2022.⁴ On March 24, 2022, the petitioners submitted a letter withdrawing the AD petition with respect to Ukraine.⁵

Section 351.207(b)(1) of Commerce’s regulations stipulates that the Secretary may terminate an investigation, provided it has concluded that termination of the investigation is in the public interest. Commerce has concluded that termination is in the public interest. Accordingly, pursuant to section 734(a)(1)(A) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.207(b)(1), and based on the petitioners’ letter withdrawing the AD petition, we are terminating this LTFV investigation.

Termination of the Investigation

In accordance with section 734(a)(1)(A) of the Act and 19 CFR 351.207(b)(1), upon the petitioners’ withdrawal of the petition, we are terminating the LTFV investigation of raw honey from Ukraine.

Suspension of Liquidation

In the *Preliminary Determination*, Commerce determined weighted-average dumping margins for exporters of raw honey from Ukraine that were above *de minimis*. Therefore, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of raw honey from Ukraine as of November 23, 2021, the date of the publication of the *Preliminary Determination*.⁶ Because Commerce is terminating this LTFV investigation, we will instruct CBP to terminate suspension of liquidation and refund any cash deposits of estimated antidumping duties for entries of raw honey from Ukraine.

Initiation of Less-Than-Fair-Value Investigations, 86 FR 26897 (May 18, 2021).

³ See *Raw Honey from Ukraine: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 86 FR 66524 (November 23, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

⁴ See Memorandum, “Tolling of Deadlines in the Less-Than-Fair-Value Investigation of Raw Honey from Ukraine,” dated March 2, 2022.

⁵ See Petitioners’ Letter, “Withdrawal of Petition and Termination of Antidumping Duty Investigation,” dated March 24, 2022.

⁶ See *Preliminary Determination*.

Dated: March 31, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022-07270 Filed 4-5-22; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-502]

Circular Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2020-2021

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that Saha Thai Steel Pipe Public Co., Ltd., also known as Saha Thai Steel Pipe (Public) Co., Ltd. (Saha Thai), as well as 28 non-examined companies, made sales of subject merchandise at less than normal value during the period of review (POR) March 1, 2020, through February 28, 2021. We further preliminarily determine that K Line Logistics (Thailand) Ltd. (K-Line) had no shipments during the POR. We invite interested parties to comment on these preliminary results.

DATES: Applicable April 6, 2022.

FOR FURTHER INFORMATION CONTACT: Michael Romani or Richard Roberts, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0198 or (202) 482-3464, respectively.

SUPPLEMENTARY INFORMATION:

Background

These preliminary results are made in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this administrative review on May 5, 2021.¹ On November 24, 2021, Commerce extended the time for issuing the preliminary results of this review to March 31, 2022.²

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 86 FR 23925 (May 5, 2021).

² See Memorandum, “2020-2021 Antidumping Duty Administrative Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated November 24, 2021.

For a more complete description of the events between the initiation of this review and these preliminary results, see the Preliminary Decision Memorandum.³ A list of topics discussed in the Preliminary Decision Memorandum is attached in Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, the signed Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order⁴

The products covered by the *Order* are pipes and tubes from Thailand. For a full description of the scope of this *Order*, see the Preliminary Decision Memorandum.⁵

Methodology

Commerce conducted this review in accordance with section 751(a)(2) of the Act. Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, see the Preliminary Decision Memorandum.

Preliminary Determination of No Shipments

On May 31, 2021, K-Line submitted a letter certifying that it had no exports or sales of subject merchandise into the United States during the POR.⁶ U.S. Customs and Border Protection (CBP) did not have any information to contradict this claim of no shipments during the POR.⁷ Therefore, we

³ See Memorandum, “Circular Welded Carbon Steel Pipes and Tubes from Thailand: Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2020-2021,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ See *Antidumping Duty Order; Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 51 FR 8341 (March 11, 1986) (*Order*).

⁵ See Preliminary Decision Memorandum at “Scope of the Order.”

⁶ See K-Line’s Letter, “Circular Welded Carbon Steel Pipes and Tubes from Thailand, Case No. A-549-502: Notice of No Sales,” dated May 31, 2021.

⁷ See Memorandum, “Antidumping Duty Administrative Review; Circular Welded Carbon Steel Pipes and Tubes from Thailand, 2020-2021: U.S. Customs and Border Protection (CBP) Data Release,” dated May 27, 2021 at Attachment. See also Instruction to Customs and Border Protection,

preliminarily determine that K-Line did not have any shipments of subject merchandise during the POR. Consistent with Commerce’s practice, we will not rescind the review with respect to K-Line but will complete the review and issue instructions to CBP based on the final results.⁸

Rate for Non-Examined Companies

The statute and Commerce’s regulations do not address the establishment of a weighted-average dumping margin to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value investigation, for guidance when calculating the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* (i.e., less than 0.5 percent) margins, and any margins determined entirely on the basis of facts available.

In this review, we have preliminarily calculated a weighted-average dumping margin for mandatory respondent, Saha Thai, that is zero percent. Where the rates for the individually examined companies are all zero, *de minimis*, or determined entirely using facts available, section 735(c)(5)(B) of the Act instructs that Commerce “may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.” One such reasonable method is to weight average the zero and *de minimis* rates, and the rates determined entirely pursuant to facts available. In fact, the SAA states that

“No shipments inquiry for Circular Welded Pipes and Tubes from Thailand by K Line Logistics (A-549-502),” dated March 7, 2022; and Memorandum, “Antidumping Duty Administrative Review; Circular Welded Carbon Steel Pipes and Tubes from Thailand, 2020-2021: U.S. Customs and Border Protection (CBP) Data Release,” dated May 27, 2021.

⁸ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

this is the “expected” method in such circumstances.⁹ Accordingly, we determined the weighted-average dumping margin for the 28 companies that were not selected for individual examination based on the weighted average dumping margin calculated for

Saha Thai, *i.e.*, zero percent, consistent with section 735(c)(5)(B) of the Act. This is the only rate determined in this review for an individually examined company, and, thus, it is applied to the 28 firms not selected for individual examination.

Preliminary Results of Review

Commerce preliminarily determines that the following weighted-average dumping margins exist for the period March 1, 2020, through February 28, 2021:

Producer/exporter	Weighted-average dumping margin (percent)
Saha Thai Steel Pipe Public Company, Ltd. (also known as Saha Thai Steel Pipe (Public) Company, Ltd.)	0.00
Review-Specific Average Rate Applicable to the Following Companies	
Other Respondents ¹⁰	0.00

Disclosure

We intend to disclose the calculations performed for these preliminary results to interested parties within five days after the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.¹¹ Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.¹² Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹³ Executive summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs should be filed using ACCESS¹⁴ and must be served on interested parties.¹⁵ An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the date that the document is due.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, within 30 days after the date of publication of this notice. Requests should contain: (1) The party’s name, address and telephone number; (2) the

number of participants; and (3) a list of issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date. Issues raised in the hearing will be limited to those raised in the briefs.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuing the final results, Commerce shall determine and CBP shall assess antidumping duties on all appropriate entries covered by this review. If an examined respondent’s weighted-average dumping margin is above *de minimis* in the final results of this review, we will calculate importer-specific *ad valorem* assessment rates on the basis of the ratio of the total amount of dumping calculated for an importer’s examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1). Where either the respondent’s weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2).

For entries of subject merchandise during the POR produced by Saha Thai for which they did not know that the merchandise was destined to the United

States and for all entries attributed to K-Line for which we found no shipments during the POR, we will instruct CBP to liquidate those entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.¹⁶ For the companies that were not selected for individual review, we intend to assign an assessment rate based on the methodology described in the “Rates for Non-Examined Companies” section. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review where applicable.

We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies under review will be equal to the weighted-average dumping margin established in the final results of this review (except,

⁹ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, vol. 1 (1994) (SAA) at 873.

¹⁰ See Appendix II for a full list of these companies.

¹¹ See 19 CFR 351.309(d).

¹² See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹³ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁴ See generally 19 CFR 351.303.

¹⁵ See 19 CFR 351.303(f).

¹⁶ See 19 CFR 351.310(c).

if that rate is *de minimis*, then the cash deposit rate will be zero); (2) for previously reviewed or investigated companies not listed above in the preliminary results of this review, including those for which Commerce may determine had no shipments during the POR, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the all-others rate of 15.67 percent, established in the less-than-fair-value investigation.¹⁷ These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: March 31, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Particular Market Situation
- V. Product Comparisons
- VI. Discussion of Methodology
- VII. Recommendation

¹⁷ See Order.

Appendix II

List of Companies Not Individually Examined

1. Apex International Logistics
2. Aquatec Maxcon Asia
3. Asian Unity Part Co., Ltd.
4. Better Steel Pipe Company Limited.
5. Bis Pipe Fitting Industry Co., Ltd.
6. Blue Pipe Steel Center Co. Ltd.
7. Chuhatsu (Thailand) Co., Ltd.
8. CSE Technologies Co., Ltd.
9. Expeditors International (Bangkok)
10. Expeditors Ltd.
11. FS International (Thailand) Co., Ltd
12. Kerry-Apex (Thailand) Co., Ltd.
13. Oil Steel Tube (Thailand) Co., Ltd.
14. Otto Ender Steel Structure Co., Ltd.
15. Pacific Pipe and Pump
16. Pacific Pipe Public Company Limited
17. Panalpina World Transport Ltd.
18. Polypipe Engineering Co., Ltd.
19. Schlumberger Overseas S.A.
20. Siam Fittings Co., Ltd.
21. Siam Steel Pipe Co., Ltd.
22. Sino Connections Logistics (Thailand) Co., Ltd.
23. Thai Malleable Iron and Steel
24. Thai Oil Group
25. Thai Oil Pipe Co., Ltd.
26. Thai Premium Pipe Co., Ltd.
27. Vatana Phaisal Engineering Company
28. Visavakit Patana Corp., Ltd.

[FR Doc. 2022-07215 Filed 4-5-22; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Request for Nominations for Members To Serve on National Institute of Standards and Technology Federal Advisory Committees

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST or Institute) invites and requests nomination of individuals for appointment to seven existing Federal Advisory Committees (Committees): Advisory Committee on Earthquake Hazards Reduction; Board of Overseers of the Malcolm Baldrige National Quality Award; Information Security and Privacy Advisory Board; Judges Panel of the Malcolm Baldrige National Quality Award; Manufacturing Extension Partnership Advisory Board; National Construction Safety Team Advisory Committee; and Visiting Committee on Advanced Technology. NIST will consider nominations received in response to this notice for appointment to the Committees, in addition to nominations already

received. Registered Federal lobbyists may not serve on NIST Federal Advisory Committees in an individual capacity.

DATES: Nominations for all Committees will be accepted on an ongoing basis and will be considered as and when vacancies arise.

ADDRESSES: See below.

SUPPLEMENTARY INFORMATION:

Advisory Committee on Earthquake Hazards Reduction (ACEHR)

Address: Please submit nominations to Tina Faecke via email at tina.faecke@nist.gov. Nominations may also be mailed to Tina Faecke, Designated Federal Officer, National Earthquake Hazards Reduction Program, NIST, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, MD 20899-8604. Additional information regarding the ACEHR, including its charter and current members may be found on its electronic home page at <https://nehrrp.gov/committees/index.htm>.

Contact Information: John "Jay" Harris, Acting Director, National Earthquake Hazards Reduction Program, NIST, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, MD 20899-8604, telephone 301-975-6538 or via email at john.harris@nist.gov.

Committee Information

The Advisory Committee on Earthquake Hazards Reduction (Committee) was established in accordance with the National Earthquake Hazards Reduction Program Reauthorization Act of 2004, Public Law 108-360 (42 U.S.C. 7704(a)(5)) and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Objectives and Duties

1. The Committee will act in the public interest to assess trends and developments in the science and engineering of earthquake hazards reduction; effectiveness of the National Earthquake Hazards Reduction Program (Program) in carrying out the activities under section (a)(2) of the Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. 7704(a)(2)); the need to revise the Program; and the management, coordination, implementation, and activities of the Program.

2. The Committee will function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. The Committee shall report to the Director of NIST at least once every two

years on its findings of the assessments and its recommendations for ways to improve the Program. In developing recommendations, the Committee shall consider the recommendations of the United States Geological Survey (USGS) Scientific Earthquake Studies Advisory Committee (SESAC).

Membership

1. The Committee shall consist of not fewer than 11, nor more than 17 members. Members shall reflect the wide diversity of technical disciplines, competencies, and communities involved in earthquake hazards reduction. Members shall be selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting the National Earthquake Hazards Reduction Program.

2. The Director of NIST shall appoint the members of the Committee. Members shall be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

3. The term of office of each member of the Committee shall be three years, except that vacancy appointments shall be for the remainder of the unexpired term of the vacancy and that members shall have staggered terms such that the Committee will have approximately one-third new or reappointed members each year.

Miscellaneous

1. Members of the Committee shall not be compensated for their services, but may, upon request, be allowed travel and per diem expenses in accordance with 5 U.S.C. 5701 *et seq.*, while attending meetings of the Committee or subcommittees thereof, or while otherwise performing duties at the request of the Chairperson, while away from their homes or regular places of business.

2. Members of the Committee shall serve as Special Government Employees (SGEs) and will be subject to the ethics standards applicable to SGEs and are required to file an annual Executive Branch Confidential Financial Disclosure Report.

3. The Committee members shall meet face-to-face at least once per year. Additional meetings may be called whenever requested by the NIST Director; such meetings may be in the form of telephone conference calls and/or videoconferences.

4. Committee meetings are open to the public.

Nomination Information

1. Members will be drawn from industry and other communities having an interest in the Program, such as, but not limited to, research and academic institutions, industry standards development organizations, state and local government, and financial communities, who are qualified to provide advice on earthquake hazards reduction and represent all related scientific, architectural, and engineering disciplines.

2. Any person who has completed two consecutive full terms of service on the Committee shall be ineligible for appointment for a third term during the two-year period following the expiration of the second term.

3. Nominees should have established records of distinguished service. The field of expertise that the candidate represents should be specified in the nomination letter. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment.

4. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad based and diverse Committee membership.

Board of Overseers of the Malcolm Baldrige National Quality Award

Address: Please submit nominations to Robert Fangmeyer, Director, Baldrige Performance Excellence Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899-1020. Nominations may also be submitted via email to Robert.Fangmeyer@nist.gov. Additional information regarding the Committee, including its charter, current membership list, and executive summary, may be found at <http://www.nist.gov/baldrige/community/overseers.cfm>.

Contact Information: Robyn Verner, Designated Federal Officer, Baldrige Performance Excellence Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899-1020; telephone 301-975-2361 or via email at Robyn.Verner@nist.gov.

Committee Information

The Board of Overseers of the Malcolm Baldrige National Quality Award (Board) was established in accordance with 15 U.S.C. 3711a(d)(2)(B), pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Objectives and Duties

1. The Board shall review the work of the private sector contractor(s), which

assists the Director of NIST in administering the Malcolm Baldrige National Quality Award (Award). The Board will make such suggestions for the improvement of the Award process as it deems necessary.

2. The Board shall make an annual report on the results of Award activities to the Director of NIST, along with its recommendations for the improvement of the Award process.

3. The Board will function solely as an advisory committee under the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

4. The Board will report to the Director of NIST.

Membership

1. The Board will consist of at least five and approximately 12 members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance, and for their preeminence in the field of organizational performance excellence. There will be a balanced representation from U.S. service, manufacturing, nonprofit, education, and health care industries. The Board will include members familiar with the quality, performance improvement operations, and competitiveness issues of manufacturing companies, service companies, nonprofits, health care providers, and educational institutions.

2. Board members will be appointed by the Secretary of Commerce for three-year terms and will serve at the discretion of the Secretary. All terms will commence on March 1 and end on the last day of February of the appropriate years.

Miscellaneous

1. Members of the Board shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*

2. The Board will meet at least annually, but usually two times a year. Additional meetings may be called as deemed necessary by the NIST Director.

3. Board meetings are open to the public. Board members do not have access to classified or proprietary information in connection with their Board duties.

Nomination Information

1. Nominations are sought from the private and public sector as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations and competitiveness issues of manufacturing

companies, service companies, educational institutions, health care providers, and nonprofit organizations. The relevant expertise of the candidate should be specified in the nomination letter. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on Federal advisory boards and Federal employment. Besides participation at meetings, it is desired that members be able to devote the equivalent of seven days between meetings to either developing or researching topics of potential interest, and so forth, in furtherance of their Board duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Board membership.

Information Security and Privacy Advisory Board (ISPAB)

Address: Please submit nominations to Jeffrey Brewer, NIST, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899–8930. Nominations may also be submitted via email at Jeffrey.Brewer@nist.gov, Attn: ISPAB Nominations. Additional information regarding the ISPAB, including its charter and current membership list, may be found on its electronic home page at <http://csrc.nist.gov/groups/SMA/ispab/index.html>.

Contact Information: Jeffrey Brewer, ISPAB Designated Federal Officer (DFO), NIST, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899–8930; telephone 301–975–2489; or via email at Jeffrey.Brewer@nist.gov.

Committee Information

The ISPAB (Committee or Board) was originally chartered as the Computer System Security and Privacy Advisory Board by the Department of Commerce pursuant to the Computer Security Act of 1987 (Pub. L. 100–235). The E-Government Act of 2002 (Pub. L. 107–347, Title III), amended Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–4), including changing the Committee's name, and the charter was amended accordingly.

Objectives and Duties

1. The Board will identify emerging managerial, technical, administrative, and physical safeguard issues relative to information security and privacy.

2. The Board will advise NIST, the Secretary of Homeland Security, and the Director of the Office of Management and Budget (OMB) on information security and privacy issues pertaining to Federal Government information

systems, including through review of proposed standards and guidelines developed by NIST.

3. The Board shall report to the Director of NIST.

4. The Board reports annually to the Secretary of Commerce, the Secretary of Homeland Security, the Director of OMB, the Director of the National Security Agency, and the appropriate committees of the Congress.

5. The Board will function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Membership

1. The Director of NIST will appoint the Chairperson and the members of the ISPAB, and members serve at the discretion of the NIST Director.

Members will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

2. The ISPAB will consist of a total of 12 members and a Chairperson, for a total of 13.

- The Board will include four members from outside the Federal Government who are eminent in the information technology industry, at least one of whom is representative of small or medium sized companies in such industries.

- The Board will include four members from outside the Federal Government who are eminent in the fields of information technology, or related disciplines, but who are not employed by or representative of a producer of information technology.

- The Board will include four members from the Federal Government who have information system management experience, including experience in information security and privacy, at least one of whom shall be from the National Security Agency.

Miscellaneous

1. Members of the Board, other than full-time employees of the Federal government, will not be compensated for their services, but will, upon request, be allowed travel expenses pursuant to 5 U.S.C. 5701 *et seq.*, while otherwise performing duties at the request of the Board Chairperson, while away from their homes or a regular place of business.

2. Meetings of the ISPAB are usually two to three days in duration and are usually held quarterly. ISPAB meetings are open to the public, including the press. Members do not have access to classified or proprietary information in connection with their ISPAB duties.

Nomination Information

1. Nominations are being accepted in all three categories described above.

2. Nominees should have specific experience related to information security or privacy issues, particularly as they pertain to Federal information technology. Letters of nomination should include the category of membership for which the candidate is applying and a summary of the candidate's qualifications for that specific category. Also include (where applicable) current or former service on Federal advisory boards and any Federal employment. Each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the ISPAB, and that they will actively participate in good faith in the tasks of the ISPAB.

3. Besides participation at meetings, it is desired that members be able to devote a minimum of two days between meetings to developing draft issue papers, researching topics of potential interest, and so forth in furtherance of their ISPAB duties.

4. Selection of ISPAB members will not be limited to individuals who are nominated. Nominations that are received and meet the requirements will be kept on file to be reviewed as ISPAB vacancies occur.

5. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse ISPAB membership.

Judges Panel of the Malcolm Baldrige National Quality Award

Address: Please submit nominations to Robert Fangmeyer, Director, Baldrige Performance Excellence Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also be submitted via email Robert.Fangmeyer@nist.gov. Additional information regarding the Committee, including its charter, current membership list, and executive summary, may be found at <https://www.nist.gov/baldrige/how-baldrige-works/baldrige-community/judges-panel>.

Contact Information: Robyn Verner, Designated Federal Officer, Baldrige Performance Excellence Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020; telephone 301–975–2361 or via email at Robyn.Verner@nist.gov.

Committee Information

The Judges Panel of the Malcolm Baldrige National Quality Award (Panel) was established in accordance with 15 U.S.C. 3711a(d)(1) and the Federal

Advisory Committee Act, as amended, 5 U.S.C. App.

Objectives and Duties

1. The Panel will ensure the integrity of the Malcolm Baldrige National Quality Award (Award) selection process. Based on a review of results of examiners' scoring of written applications, Panel members will vote on which applicants' merit site visits by examiners to verify the accuracy of quality improvements claimed by applicants. The Panel will also review results and findings from site visits, and recommend Award recipients.

2. The Panel will ensure that individual judges will not participate in the review of applicants as to which they have any real or perceived conflict of interest.

3. The Panel will function solely as an advisory body, and will comply with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

4. The Panel will report to the Director of NIST.

Membership

1. The Panel will consist of no less than 9, and not more than 12, members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. There will be a balanced representation from U.S. service, manufacturing, nonprofit, education, and health care industries. The Panel will include members familiar with the quality improvement operations and competitiveness issues of manufacturing companies, service companies, nonprofits, health care providers, and educational institutions.

2. Panel members will be appointed by the Secretary of Commerce for three-year terms and will serve at the discretion of the Secretary. All terms will commence on March 1 and end on the last day of February of the appropriate year.

3. Members who are not Federal employees will serve as Special Government Employees (SGEs) and will be subject to the ethical standards applicable to SGEs.

Miscellaneous

1. Members of the Panel shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*

2. The Panel will meet three times per year. Additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are usually one to four days in duration.

In addition, each Judge must attend an annual three-day Examiner training course.

3. When approved by the Department of Commerce Chief Financial Officer and Assistant Secretary for Administration, Panel meetings are closed or partially closed to the public.

Nomination Information

1. Nominations are sought from all U.S. service and manufacturing industries, education, health care, and nonprofits as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations and competitiveness issues of manufacturing companies, service companies, health care providers, educational institutions, and nonprofit organizations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. Besides participation at meetings, it is desired that members be either developing or researching topics of potential interest, reading Baldrige applications, and so forth, in furtherance of their Panel duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Panel membership.

Manufacturing Extension Partnership (MEP) Advisory Board

Address: Please submit nominations to Ms. Cheryl Gendron, NIST, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899-4800. Nominations may also be submitted via email at Cheryl.Gendron@nist.gov. Additional information regarding MEP, including its charter, may be found on its electronic home page at <http://www.nist.gov/mep/advisory-board.cfm>.

Contact Information: Ms. Cheryl Gendron, Designated Federal Officer, NIST, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899-4800; telephone 301-975-4919, fax 301-963-6556; or via email at Cheryl.Gendron@nist.gov.

Committee Information

The MEP Advisory Board (Board) is authorized under section 501 of the American Innovation and Competitiveness Act (Pub. L. 114-329); codified at 15 U.S.C. 278k(m), as amended, in accordance with the provisions of the Federal Advisory

Committee Act, as amended, 5 U.S.C. App.

Objectives and Duties

1. The Board will provide advice on MEP activities, plans, and policies.

2. The Board will assess the soundness of MEP plans and strategies.

3. The Board will assess current performance against MEP program plans.

4. The Board will function solely in an advisory capacity, and in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

5. The Board shall transmit through the Director of NIST an annual report to the Secretary of Commerce for transmittal to Congress not later than 30 days after the submission to Congress of the President's annual budget request each year. The report shall address the status of the MEP program.

Membership

1. The Board shall consist of not fewer than 10 members, appointed by the Director of NIST and broadly representative of stakeholders. At least 2 members shall be employed by or on an advisory board for a MEP Center, at least 5 members shall be from U.S. small businesses in the manufacturing sector, and at least 1 member shall represent a community college. No member shall be an employee of the Federal Government.

2. The Director of NIST shall appoint the members of the Board. Members shall be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. Board members serve at the discretion of the Director of NIST.

3. The term of office of each member of the Board shall be three years, except that vacancy appointments shall be for the remainder of the unexpired term of the vacancy. Any person who has completed two consecutive full terms of service on the Board shall thereafter be ineligible for appointment during the one-year period following the expiration of the second term.

Miscellaneous

1. Members of the Board will not be compensated for their services but will, upon request, be allowed travel and per diem expenses as authorized by 5 U.S.C. 5701 *et seq.*, while attending meetings of the Board or subcommittees thereof, or while otherwise performing duties at the request of the Chair, while away from their homes or regular places of business.

2. The Board will meet at least biannually. Additional meetings may be

called by the Director of NIST or the Designated Federal Officer (DFO).

3. Committee meetings are open to the public.

Nomination Information

1. Nominations are being accepted in all categories described above.

2. Nominees should have specific experience related to manufacturing and industrial extension services. Letters of nomination should include the category of membership for which the candidate is applying and a summary of the candidate's qualifications for that specific category.

3. Nominations that are received and meet the requirements will be kept on file to be reviewed as Board vacancies occur.

4. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse MEP Advisory Board membership.

National Construction Safety Team (NCST) Advisory Committee

Address: Please submit nominations to Benjamin Davis, Designated Federal Officer, NIST, 100 Bureau Drive, Mail Stop 8615, Gaithersburg, MD 20899–8604 or via email at Benjamin.Davis@nist.gov. Additional information regarding the NCST Advisory Committee, including its charter, may be found on its electronic home page at <https://www.nist.gov/el/disaster-resilience/disaster-and-failure-studies/national-construction-safety-team-ncst/advisory>.

Contact Information: Maria Dillard, Acting Director, Disaster and Failure Studies Program, NIST, 100 Bureau Drive, Mail Stop 8615, Gaithersburg, MD 20899–8604, telephone 301–975–4953; or via email at Maria.Dillard@nist.gov.

Committee Information

The NCST Advisory Committee (Committee) was established in accordance with the National Construction Safety Team Act, Public Law 107–231, and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Objectives and Duties

1. The Committee shall advise the Director of NIST on carrying out the National Construction Safety Team Act (Act), review the procedures developed under section 2(c)(1) of the Act, and review the reports issued under section 8 of the Act.

2. The Committee functions solely as an advisory body, in accordance with

the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. On January 1 of each year, the Committee shall transmit to the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate a report that includes: (1) An evaluation of National Construction Safety Team (Team) activities, along with recommendations to improve the operation and effectiveness of Teams, and (2) an assessment of the implementation of the recommendations of Teams and of the

Membership

1. The Committee shall consist of no less than 4 and no more than 12 members. Members shall reflect the wide diversity of technical disciplines and competencies involved in the National Construction Safety Teams investigations. Members shall be selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting the National Construction Safety Teams.

2. The Director of NIST shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

Miscellaneous

1. Members of the Committee shall not be compensated for their services but may, upon request, be allowed travel and per diem expenses in accordance with 5 U.S.C. 5703.

2. Members of the Committee shall serve as Special Government Employees (SGEs), will be subject to the ethics standards applicable to SGEs, and are required to file an annual Executive Branch Confidential Financial Disclosure Report.

3. The Committee shall meet at least once per year. Additional meetings may be called whenever requested by the NIST Director or the Designated Federal Officer (DFO); such meetings may be in the form of telephone conference calls and/or videoconferences.

Nomination Information

1. Nominations are sought from industry and other communities having an interest in the National Construction Safety Teams investigations.

2. Nominees should have established records of distinguished service. The field of expertise that the candidate

represents should be specified in the nomination letter. Nominations for a particular field should come from organizations or individuals within that field. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Committee membership.

Visiting Committee on Advanced Technology (VCAT)

Address: Please submit nominations to Stephanie Shaw, Designated Federal Officer, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, MD 20899–1060. Nominations may also be submitted via email at Stephanie.Shaw@nist.gov. Additional information regarding the VCAT, including its charter, current membership list, and past reports may be found on its electronic homepage at <http://www.nist.gov/director/vcat/>.

Contact Information: Stephanie Shaw, Designated Federal Officer, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, MD 20899–1060, telephone 301–975–2667 or via email at Stephanie.Shaw@nist.gov.

Committee Information

The VCAT (Committee) was established in accordance with 15 U.S.C. 278 and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Objectives and Duties

1. The Committee shall review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs, within the framework of applicable national policies as set forth by the President and the Congress. 15 U.S.C. 278(a).

2. The Committee shall provide an annual report, through the Director of NIST, to the Secretary of Commerce for submission to the Congress not later than 30 days after the submittal to Congress of the President's annual budget request in each year. Such report shall deal essentially, though not necessarily exclusively, with policy issues or matters which affect NIST, or with which the Committee in its official role as the private sector policy adviser of NIST is concerned. Each such report shall identify areas of research and research techniques of the Institute of potential importance to the long-term competitiveness of United States industry, in which the Institute

possesses special competence, which could be used to assist United States enterprises and United States industrial joint research and development ventures. 15 U.S.C. 278(h)(1). The Committee shall submit, through the Director of NIST, to the Secretary and the Congress such additional reports on specific policy matters as it deems appropriate. 15 U.S.C. 278(h)(2).

3. The Committee will function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

4. The Committee shall report to the Director of NIST.

Membership

1. The Director of NIST shall appoint the members of the Committee. Members shall be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. 15 U.S.C. 278(a). Members shall be selected solely on the basis of established records of distinguished service; shall provide representation of a cross-section of traditional and emerging United States industries; and shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. No employee of the Federal Government shall serve as a member of the Committee. 15 U.S.C. 278(b).

2. Members of the Committee shall serve as Special Government Employees (SGEs) and will be subject to the ethics standards applicable to SGEs.

3. The Committee shall consist of not fewer than nine members appointed by the Director of NIST, a majority of whom shall be from United States industry. 15 U.S.C. 278(a). The term of office of each member of the Committee shall be three years, except that vacancy appointments shall be for the remainder of the unexpired term of the vacancy. 15 U.S.C. 278(c)(1). Members shall serve at the discretion of the Director of NIST.

4. Any person who has completed two consecutive full terms of service on the Committee shall be ineligible for appointment for a third term during the one-year period following the expiration of the second term. 15 U.S.C. 278(c)(1).

5. Pursuant to 15 U.S.C. 278(f), the Committee chairperson and vice chairperson shall be elected by the members of the Committee at each annual meeting occurring in an even-numbered year. The vice chairperson shall perform the duties of the chairperson in his or her absence. In case a vacancy occurs in the position of the chairperson or vice chairperson, the

Committee shall elect a member to fill such vacancy.

6. Members of the Committee will not be compensated for their services, but will, upon request, be allowed travel expenses in accordance with 5 U.S.C. 5701 *et seq.*, while attending meetings of the Committee or of its subcommittees, or while otherwise performing duties at the request of the chairperson, while away from their homes or a regular place of business.

7. Pursuant to 15 U.S.C. 278(g), the Committee may, with the concurrence of a majority of its members, permit the appointment of a staff consisting of not more than four professional staff members and such clerical staff members as may be necessary. Such staff members shall be appointed by the Director after consultation with the chairperson of the Committee and assigned at the direction of the Committee.

8. Subcommittees: Pursuant to 15 U.S.C. 278(e), the Committee shall have an executive committee, and may delegate to it such powers and functions of the Committee as it deems appropriate. The Committee and/or the Director of NIST may establish such other subcommittees, task forces, and working groups consisting of members from the parent Committee as may be necessary, subject to the provisions of FACA, the FACA implementing regulations, and applicable Department of Commerce guidance. Subcommittees must report back to the Committee and any recommendations based on their work will be deliberated and agreed upon by the Committee prior to dissemination to NIST.

Miscellaneous

1. Meetings of the VCAT usually take place at the NIST headquarters in Gaithersburg, Maryland. The Committee will meet at least twice each year at the call of the chairperson or whenever one-third of the members so request in writing. The Committee shall not act in the absence of a quorum, which shall consist of a majority of the members of the Committee not having a conflict of interest in the matter being considered by the Committee. 15 U.S.C. 278(d).

2. Generally, Committee meetings are open to the public.

Nomination Information

1. Nominations are sought from all fields described above.

2. Nominees should have established records of distinguished service and shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting,

environment and international relations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on Federal advisory boards and Federal employment. In addition, each nomination letter should state that the candidate agrees to the nomination, acknowledges the responsibilities of serving on the VCAT, and will actively participate in good faith in the tasks of the VCAT.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse VCAT membership.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022-07272 Filed 4-5-22; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB940]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public online meeting.

SUMMARY: The Groundfish Subcommittee of the Pacific Fishery Management Council's (Pacific Council's) Scientific and Statistical Committee (SSC) will hold a meeting to review proposed revisions to the Terms of Reference for the Groundfish Stock Assessment Review Process for 2023 and 2024. The meeting is open to the public.

DATES: The SSC Groundfish Subcommittee's online meeting will be held Friday, April 22, 2022, beginning at 1 p.m. and continuing until 5 p.m., Pacific Daylight Time or until business for the day has been completed.

ADDRESSES: The SSC's Groundfish Subcommittee's meeting will be an online meeting. Specific meeting information, including directions on how to join the meeting and system requirements, will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact

him at (503) 820-2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820-2413.

SUPPLEMENTARY INFORMATION: The purpose of the SSC Groundfish Subcommittee's meeting is to review proposed changes to the Terms of Reference for the Groundfish Stock Assessment Reviews that will inform the process for conducting and reviewing groundfish assessments in 2023 and 2024. Members of the Pacific Council's groundfish advisory bodies are encouraged to attend. Proposed changes to the Terms of Reference (<https://www.pcouncil.org/documents/2022/02/e-8-attachment-4-draft-terms-of-reference-for-the-groundfish-and-coastal-pelagic-species-stock-assessment-process-for-2023-2024.pdf/>) were provided to the Pacific Council at their March 2022 virtual meeting, which were adopted by the Pacific Council for public review. The Pacific Council is scheduled to adopt a final Terms of Reference at their June meeting in Vancouver, WA.

No management actions will be decided by the SSC's Groundfish Subcommittee. The SSC Groundfish Subcommittee members' role will be development of recommendations and reports for consideration by the SSC and Pacific Council at the June meeting in Vancouver, WA.

Although nonemergency issues not contained in the meeting agendas may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the SSC Groundfish Subcommittee to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820-2412) at least 10 days prior to the meeting date.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: April 1, 2022.

Key Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022-07302 Filed 4-5-22; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB855]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off of Coastal Virginia

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Virginia Electric and Power Company doing business as Dominion Energy Virginia (Dominion Energy) for authorization to take marine mammals incidental to marine site characterization surveys off of Virginia in support of the Coastal Virginia Offshore Wind Commercial (CVOW Commercial) Project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 6, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to ITP.Davis@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or

received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Leah Davis, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the "take" of marine mammals, with certain exceptions. sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other "means of effecting the least practicable adverse impact" on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as "mitigation"); and requirements pertaining to the mitigation, monitoring

and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On September 30, 2021, NMFS received a request from Dominion Energy for an IHA to take marine mammals incidental to marine site characterization surveys off of Virginia. Dominion Energy submitted revised applications on December 3, 2021, January 21, 2022 and March 2, 2022 in

response to comments from NMFS. The application was deemed adequate and complete on March 8, 2022. Dominion Energy's request is for take of a small number of 16 species of marine mammals by Level B harassment only. Neither Dominion Energy nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued IHAs to Dominion Energy for similar and related work in the same general area (85 FR 55415; September 8, 2020 (modified on December 17, 2020 (85 FR 81879) and April 22, 2021 (86 FR 21298)), 85 FR 30930; May 21, 2020, and 83 FR 39062; August 8, 2018). Dominion Energy complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the Estimated Take section.

Description of Proposed Activity

Overview

As part of its overall marine site characterization survey operations, Dominion Energy proposes to conduct high-resolution geophysical (HRG) surveys in the Lease Area and along the Offshore Export Cable Corridor (OECC) off of Virginia. The purpose of the surveys is to locate and identify potential unexploded ordnance (UXO) in support of the Dominion Energy Coastal Virginia Offshore Wind Commercial Project. Underwater sound resulting from Dominion Energy's proposed site characterization survey activities, specifically HRG surveys, has the potential to result in incidental take of marine mammals in the form of behavioral harassment.

Dates and Duration

Dominion Energy initially anticipated that HRG survey activities would occur on approximately 122 vessel days (104 in the Lease Area and 18 in the project's OECC), with an assumed daily survey distance of 178 km/day. However, in discussions with NMFS, Dominion Energy later updated the estimated vessel distance to 58 km/day to better reflect actual daily vessel distances achieved during previous surveys. Accordingly, survey activities are now estimated to occur on up to 244 vessel days (208 days in the Lease Area and 36 days in the project's OECC). Each day that a survey vessel is operating counts as a single survey day, *e.g.*, two survey vessels operating on the same day count as two survey days. This schedule is based on assumed 24-hour operations. Dominion Energy proposes to begin survey activities upon receipt of an IHA, and continue for up to one year (though the actual duration will likely be shorter, particularly given the use of multiple vessels). The IHA would be effective for one year from the date of issuance.

Specific Geographic Region

Dominion Energy's HRG survey activities would occur in the Northwest Atlantic Ocean within federal and state waters. The surveys would occur in Lease Area OCS–A 0483, which is a portion of the Mid-Atlantic Wind Energy Area, and along an export cable corridor within the lower Chesapeake Bay as shown in Figure 1. The Lease Area is approximately 498 km² (122,799 acres).

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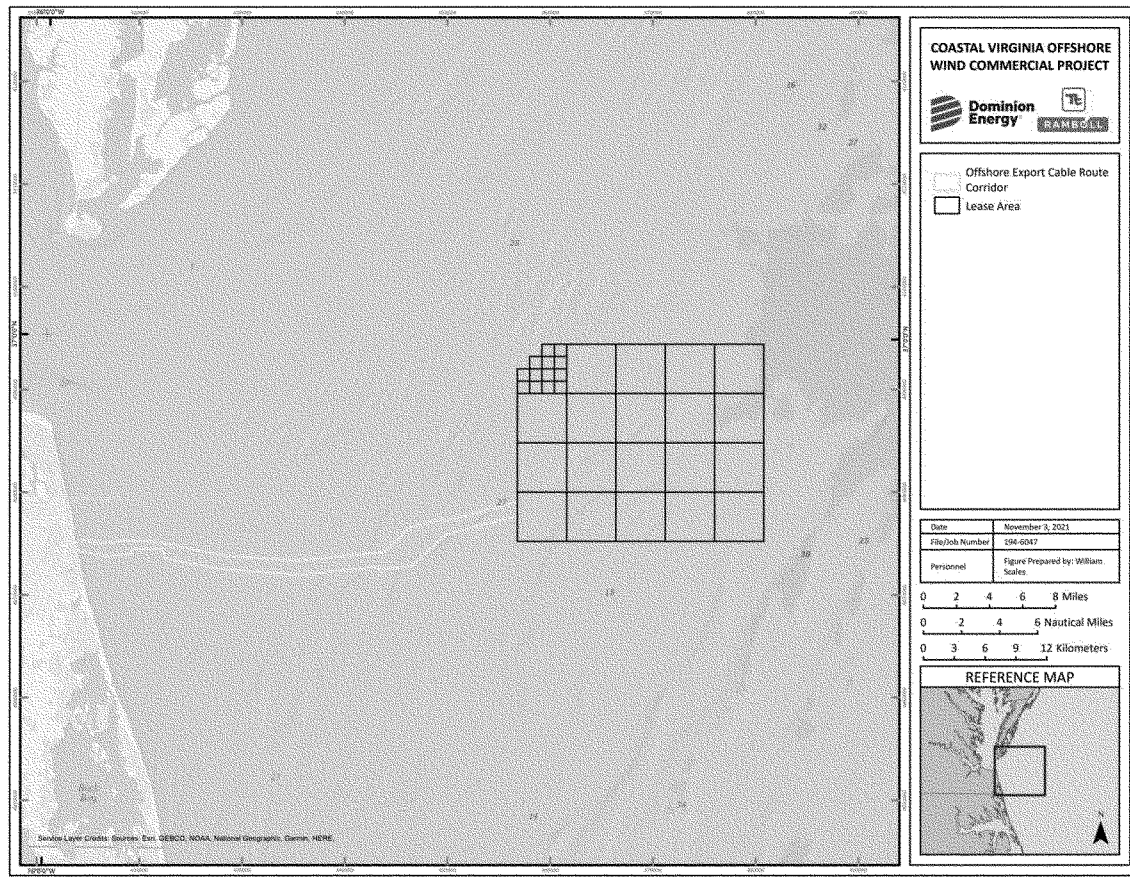


Figure 1-- Proposed Survey Area

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Detailed Description of Specific Activity

Dominion Energy proposes to conduct HRG survey operations including single and multibeam depth sounding, seafloor imaging, and medium penetration sub-bottom profiling. The HRG surveys may be conducted using any or all of the following equipment types: Side scan sonar, single and multibeam depth sounders, magnetometers, boomers, or sparkers. Dominion Energy anticipates that HRG survey activities would include two vessels operating concurrently (though up to four vessels may operate concurrently). Survey vessels would operate at least several kilometers apart, typically operating with even greater distances of separation between two vessels. Dominion Energy assumes that HRG survey activities would be conducted continuously 24 hours per day, with an assumed daily survey distance of 58 km per day. This assumption is based on Dominion’s experience through past survey effort.

Acoustic sources planned for use during HRG survey activities proposed by Dominion Energy include the following:

- Medium penetration sub-bottom profiler (boomers and sparkers) to map deeper subsurface stratigraphy as needed. A boomer is a broadband sound source operating in the 3.5 Hz to 10 kHz frequency range. Sparkers create acoustic pulses from 50 Hz to 4 kHz omnidirectionally from the source that can penetrate several hundred meters into the seafloor. These sources are typically towed behind the vessel;
- Operation of the following survey equipment types is not reasonably expected to present risk of marine mammal take, and will not be discussed further beyond the brief summaries provided below:
 - Multibeam echosounders to determine water depths and general bottom topography (estimated to range from approximately minimum vessel draft to 38 m deep).

- Single beam echosounders to determine water depths and general bottom topography (estimated to range from approximately minimum vessel draft to 38 m deep).
 - Sidescan sonar (SSS) is used for seabed sediment classification purposes and to identify natural and man-made acoustic targets resting on the bottom as well as any anomalous features.
- Table 1 identifies the representative survey equipment with the expected potential to result in exposure of marine mammals and potentially result in take. The make and model of the listed geophysical equipment may vary depending on availability and the final equipment choices will vary depending on the final survey design, vessel availability, and survey contractor selection.
- HRG surveys are expected to use several equipment types concurrently in order to collect multiple aspects of geophysical data along one transect. Selection of equipment combinations is based on specific survey objectives.

TABLE 1—SUMMARY OF REPRESENTATIVE HRG EQUIPMENT

System	Representative equipment ^a	Operating frequency (kHz)	RMS source level (dB re 1 μPa m)	Peak source level (dB re 1 μPa m)	Primary beam width (degrees)	Pulse duration (millisecond)
Multibeam Echosounder	R2Sonics 2026	170–450	^b 191	^b 221	0.45 × 0.45–1 × 1	0.015–1.115
Medium Penetration Seismic	Geo Marine Dual 400 Sparker 800J.	0.3–1.2	^c 203	^c 212	Omnidirectional	0.5–0.8
	Applied Acoustics S-Boom (Triple Plate Boomer 1000J).	0.5–3.5	^d 203	^d 213	60 ^e	10

^a Make/model of equipment may vary depending on availability. Will be finalized as part of the survey preparations and contract negotiations with the survey contractor.
^b Reported by manufacturer.
^c Based on data from Crocker and Frantantonio (2016) for the Applied Acoustics Dura Spark.
^d Based on data from Crocker and Frantantonio (2016) for the Applied Acoustics S-Boom with CS.
^e The beam width was based on data from Crocker and Frantantonio (2016) for the Applied Acoustics S-Boom.
 dB re 1 μPa m—decibels referenced to 1 microPascal at 1 meter.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS’s Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS’s website (<https://www.fisheries.noaa.gov/find-species>).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS’s SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS’s stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS’s U.S. Atlantic and Gulf of Mexico SARs. All values presented in Table 2 are the most recent available at the time of publication and are available in the 2020 SARs (Hayes *et al.* 2021) and draft 2021 SARs (available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports>).

TABLE 2—MARINE MAMMALS LIKELY TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY DOMINION ENERGY’S PROPOSED ACTIVITY

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae: North Atlantic right whale ...	<i>Eubalaena glacialis</i>	Western North Atlantic	E, D, Y	368 (0, 364, 2019)	0.7	7.7
Family Balaenopteridae (rorquals):						
Fin whale	<i>Balaenoptera physalus</i>	Western North Atlantic	E, D, Y	6,802 (0.24, 5,573, 2016)	11	1.8
Humpback whale	<i>Megaptera novaeangliae</i>	Gulf of Maine	-, -, Y	1,396 (0, 1,380, 2016)	22	12.15
Minke whale	<i>Balaenoptera acutorostrata</i>	Canadian East Coast	-, -, N	21,968 (0.31, 17,002, 2016).	170	10.6
Sei whale	<i>Balaenoptera borealis</i>	Nova Scotia	E, D, Y	6,292 (1.02, 3,098, 2016)	6.2	0.8
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae: Sperm whale	<i>Physeter macrocephalus</i>	North Atlantic	E, D, Y	4,349 (0.28, 3,451, 2016)	3.9	0
Family Delphinidae:						
Atlantic white-sided dolphin	<i>Lagenorhynchus acutus</i>	Western North Atlantic	-, -, N	93,233 (0.71, 54,443, 2016).	544	27
Bottlenose dolphin	<i>Tursiops spp.</i>	Western North Atlantic Offshore	-, -, N	62,851 ^b (0.23, 51,914 ^b , 2016).	519	28
Short-finned pilot whale	<i>Globicephala macrorhynchus</i> ...	Southern Migratory Coastal	-, -, Y	3,751 (0.6, 2,353, 2016)	23	0–18.3
		Western North Atlantic	-, -, Y	28,924 (0.24, 23,637, 2016).	236	136

TABLE 2—MARINE MAMMALS LIKELY TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY DOMINION ENERGY’S PROPOSED ACTIVITY—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Long-finned pilot whale	<i>Globicephala melas</i>	Western North Atlantic	-, -, N	39,215 (0.3, 30,627, 2016).	306	29
Risso’s dolphin	<i>Grampus griseus</i>	Western North Atlantic	-, -, N	35,215 (0.19, 30,051, 2016).	301	34
Common dolphin	<i>Delphinus delphis</i>	Western North Atlantic	-, -, N	172,974 (0.21, 145,216, 2016).	1,452	390
Atlantic spotted dolphin	<i>Stenella frontalis</i>	Western North Atlantic	-, -, N	39,921 (0.27, 32,032, 2016).	320	0
Family Phocoenidae (porpoises):						
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy	-, -, N	95,543 (0.31, 74,034, 2016).	851	164
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Gray seal ⁴	<i>Halichoerus grypus</i>	Western North Atlantic	-, -, N	27,300 (0.22, 22,785, 2016).	1,389	4,453
Harbor seal	<i>Phoca vitulina</i>	Western North Atlantic	-, -, N	61,336 (0.08, 57,637, 2018).	1,729	339

¹ ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

³ These values, found in NMFS’s SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike).

⁴ NMFS’ stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,431. The annual M/SI value given is for the total stock.

As indicated above, all 16 species (with 17 managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. All species that could potentially occur in the proposed survey areas are included in Table 3–1 of the IHA application. However, the temporal and/or spatial occurrence of several species listed in Table 3–1 of the IHA application is such that take of these species is not expected to occur. Blue whales rarely occur in the project area (U.S. Navy Marine Species Monitoring, 2018a). Clymene dolphin, dwarf sperm whale, false killer whale, Fraser’s dolphin, killer whale, pantropical spotted dolphin, melon-headed whale, pygmy killer whale, pygmy sperm whale, rough-toothed dolphin, spinner dolphin, striped dolphin, white beaked dolphin, Blainville’s beaked whale, Cuvier’s beaked whale, Sowerby’s beaked whale, and True’s beaked whale are generally found in more pelagic shelf-break waters, have a preference for northern latitudes, or are so rarely sighted that their presence in the Survey Area is unlikely. While a harp seal was recently observed at the Chesapeake Tunnel Joint Venture Parallel Thimble Shoal Tunnel Project in Virginia Beach, Virginia, such an occurrence is extremely uncommon,

as they, and hooded seals typically occur far north of the project area.

In addition, the Florida manatee (*Trichechus manatus*; a sub-species of the West Indian manatee) has been previously documented as an occasional visitor to the Northeast region during summer months (U.S. Fish and Wildlife Service (USFWS) 2019). However, manatees are managed by the U.S. Fish and Wildlife Service (USFWS) and are not considered further in this document.

For the majority of species potentially present in the specific geographic region, NMFS has designated only a single generic stock (e.g., “western North Atlantic”) for management purposes. This includes the “Canadian east coast” stock of minke whales, which includes all minke whales found in U.S. waters and is also a generic stock for management purposes. For humpback whales, NMFS defines stocks on the basis of feeding locations, i.e., Gulf of Maine. However, references to humpback whales in this document refer to any individuals of the species that are found in the specific geographic region. Additional information on these animals can be found in Sections 3 and 4 of Dominion Energy’s IHA application, the draft 2021 SARs (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>), and NMFS’ website.

Below is a description of the species that have the highest likelihood of occurring in the survey area and are thus expected to potentially be taken by the proposed activities as well as further detail informing the baseline for select species (i.e., information regarding current Unusual Mortality Events (UMEs) and important habitat areas).

North Atlantic Right Whale

The North Atlantic right whale ranges from calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters (Hayes *et al.* 2018). Surveys have demonstrated the existence of seven areas where North Atlantic right whales congregate seasonally, including north and east of the proposed survey area in Georges Bank, off Cape Cod, and in Massachusetts Bay (Hayes *et al.* 2018). In the late fall months (e.g., October), right whales are generally thought to depart from the feeding grounds in the North Atlantic and move south to their calving grounds off Georgia and Florida. However, recent research indicates our understanding of their movement patterns remains incomplete (Davis *et al.* 2017). A review of passive acoustic monitoring (PAM) data from 2004 to 2014 throughout the western North Atlantic demonstrated nearly continuous year-round right whale

presence across their entire habitat range (for at least some individuals), including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.* 2017). However, given that Dominion Energy's surveys would occur off of Virginia, any right whales in the vicinity of the survey areas are expected to be transient, most likely migrating through the area.

The western North Atlantic population demonstrated overall growth of 2.8 percent per year between 1990 to 2010, despite a decline in 1993 and no growth between 1997 and 2000 (Pace *et al.* 2017). However, since 2010 the population has been in decline, with a 99.99 percent probability of a decline of just under 1 percent per year (Pace *et al.* 2017). Between 1990 and 2015, calving rates varied substantially, with low calving rates coinciding with all three periods of decline or no growth (Pace *et al.* 2017). On average, North Atlantic right whale calving rates are estimated to be roughly half that of southern right whales (*Eubalaena australis*; Pace *et al.* 2017), which are increasing in abundance (NMFS, 2015). In 2018, no new North Atlantic right whale calves were documented in their calving grounds; this represented the first time since annual NOAA aerial surveys began in 1989 that no new right whale calves were observed. Eighteen right whale calves were documented in 2021. As of March 13, 2022 and the writing of this proposed notice, 15 North Atlantic right whale calves have documented to have been born during this calving season. Presently, the best available population estimate for North Atlantic right whales is 386 per the 2021 draft Atlantic SARs (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>).

The proposed survey area overlaps part of the migratory corridor Biologically Important Area (BIA) for North Atlantic right whales (effective March–April and November–December) that extends from Massachusetts to Florida (LaBrecque *et al.* 2015). Off the coast of Virginia, the migratory BIA extends from the coast to beyond the shelf break. This important migratory area is approximately 269,488 km² in size and is comprised of the waters of the continental shelf offshore the East Coast of the United States, extending from Florida through Massachusetts. NMFS' regulations at 50 CFR part 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMA) for right whales in 2008. SMAs were

developed to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds. The proposed survey area is in the vicinity of the SMA off of the Chesapeake Bay that is active from November 1 through April 30 of each year. Within SMAs, the regulations require a mandatory vessel speed (less than 10 kn) for all vessels greater than 65 ft.

Elevated North Atlantic right whale mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast. This event has been declared an Unusual Mortality Event (UME), with human interactions, including entanglement in fixed fishing gear and vessel strikes, implicated in at least 15 of the mortalities thus far. As of March 13, 2022, a total of 34 confirmed dead stranded whales (21 in Canada; 13 in the United States) have been documented. The cumulative total number of animals in the North Atlantic right whale UME has been updated to 49 individuals to include both the confirmed mortalities (dead stranded or floaters; n=34) and seriously injured free-swimming whales (n=15) to better reflect the confirmed number of whales likely removed from the population during the UME and more accurately reflect the population impacts. More information is available online at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2022-north-atlantic-right-whale-unusual-mortality-event>.

Information on right whale Slow Zones can be found on NMFS' website (<https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales>).

Fin Whale

Fin whales are common in waters of the U.S. Atlantic Exclusive Economic Zone (EEZ), principally from Cape Hatteras northward (Waring *et al.* 2016). Fin whales are present in the Mid-Atlantic region during all four seasons, although sighting data indicate that they are more prevalent during winter, spring, and summer (Hayes *et al.* 2019). While fall is the season of lowest overall abundance off Virginia, they do not depart the area entirely. Fin whales, much like humpback whales, seem to exhibit habitat fidelity to feeding areas (Kenney and Vigness-Raposa 2010; Hayes *et al.* 2019). While fin whales typically feed in the Gulf of Maine and the waters surrounding New England, mating and calving (and general wintering) areas are largely unknown (Hayes *et al.* 2019).

Humpback Whale

Humpback whales are found worldwide in all oceans. Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. On September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the current species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62259; September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the survey area, though these individuals are not necessarily from the Gulf of Maine feeding population managed as a stock by NMFS. Barco *et al.* (2002) estimated that, based on photo-identification, only 39 percent of individual humpback whales observed along the mid- and south Atlantic U.S. coast are from the Gulf of Maine stock. Bettridge *et al.* (2015) estimated the size of this West Indies DPS population at 12,312 (95 percent CI 8,688–15,954) whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.* 2003; Smith *et al.* 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.* 2015).

Although humpback whales are migratory between feeding areas and calving areas, individual variability in the timing of migrations may result in the presence of individuals in high-latitude areas throughout the year (Straley, 1990). Records of humpback whales off the U.S. mid-Atlantic coast (New Jersey to North Carolina) from January through March suggest these waters may represent a supplemental winter feeding ground used by juvenile and mature humpback whales of the U.S. and Canadian North Atlantic stocks (LaBrecque *et al.*, 2015).

Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. Partial or full necropsy examinations have been conducted on approximately half of the 157 known cases (as of March 13, 2022). Of the whales examined, about 50 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not

consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. More information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2022-humpback-whale-unusual-mortality-event-along-atlantic-coast>.

Minke Whale

Minke whales can be found in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45° W) to the Gulf of Mexico (Waring *et al.* 2016). This species generally occupies waters less than 100 m deep on the continental shelf. Little is known about minke whales' specific movements through the mid-Atlantic region; however, there appears to be a strong seasonal component to minke whale distribution, with acoustic detections indicating that they migrate south in mid-October to early November, and return from wintering grounds starting in March through early April (Risch *et al.* 2014). Northward migration appears to track the warmer waters of the Gulf Stream along the continental shelf, while southward migration is made farther offshore (Risch *et al.* 2014).

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina, with a total of 122 strandings at the time of publication of this notice. There have been eight recorded strandings in Virginia and two in North Carolina. This event has been declared a UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2022-minke-whale-unusual-mortality-event-along-atlantic-coast>.

Sei Whale

The Nova Scotia stock of sei whales occurs in deeper waters of the continental shelf edge waters of the eastern United States and northeastward to south of Newfoundland. The southern portion of the stock's range during spring and summer includes the

Gulf of Maine and Georges Bank. Spring is the period of greatest abundance in U.S. waters, with sightings concentrated along the eastern margin of Georges Bank and into the Northeast Channel area, and along the southwestern edge of Georges Bank in the area of Hydrographer Canyon (Waring *et al.* 2015). In the waters off of Virginia, sei whales are uncommon; however, a 2018 aerial survey conducted by the U.S. Navy recorded sei whales in the area surrounding Norfolk Canyon (U.S. Navy n.d.).

Atlantic White-Sided Dolphin

Atlantic white-sided dolphins occur in temperate and sub-polar waters of the North Atlantic, primarily in continental shelf waters to the 100 m depth contour from central West Greenland to North Carolina (Waring *et al.* 2017). The Gulf of Maine stock is most common in continental shelf waters from Hudson Canyon to Georges Bank, and in the Gulf of Maine and lower Bay of Fundy. Sighting data indicate seasonal shifts in distribution (Northridge *et al.* 1997). During January to May, low numbers of white-sided dolphins occur from Georges Bank to Jeffreys Ledge (off New Hampshire), with even lower numbers south of Georges Bank, as documented by a few strandings collected on beaches of Virginia to South Carolina. From June through September, large numbers of white-sided dolphins occur from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern Georges Bank to southern Gulf of Maine. Infrequent Virginia and North Carolina observations appear to represent the southern extent of the species' range during the winter months (Hayes *et al.* 2019).

Bottlenose Dolphin

The population of bottlenose dolphins in the North Atlantic consists of a complex mosaic of dolphin stocks (Waring *et al.* 2016). There are two stocks that may be found in the vicinity of the Survey Area—the western North Atlantic Offshore Stock (WNAOS) and the Southern Coastal Migratory Stock (SCMS). There are two distinct bottlenose dolphin morphotypes: Coastal and offshore. The coastal morphotype resides in waters typically less than 20 m (65.6 ft) deep, along the inner continental shelf (within 7.5 km [4.6 miles] of shore; Hayes *et al.* 2018). This coastal population was further subdivided into seven stocks based largely upon spatial distribution (Waring *et al.* 2016). The SCMS is the coastal stock found south of Assateague,

Virginia, to northern Florida and is the stock most likely to be encountered in the vicinity of the export cable portion of the Survey Area. Seasonally, SCMS movements indicate they are mostly found in southern North Carolina (Cape Lookout) from October to December; they continue to move farther south from January to March to as far south as northern Florida and move back north to coastal North Carolina from April to June. SCMS bottlenose dolphins occupy waters north of Cape Lookout, North Carolina, to as far north as Chesapeake Bay from July to August. An observed shift in spatial distribution during a summer 2004 survey indicated that the northern boundary for the SCMS may vary from year to year (Hayes *et al.* 2018). The offshore population consists of one stock (WNAOS) in the western North Atlantic Ocean distributed primarily along the outer continental shelf and continental slope, and distributed widely during the spring and summer from Georges Bank to the Florida Keys with late summer and fall incursions as far north the Gulf of Maine depending on water temperatures (Kenney 1990; Hayes *et al.* 2017). The WNAOS generally occurs seaward of 34 km (21 miles) and in deeper waters.

A combined genetic and logistic regression analysis that incorporated depth, latitude, and distance from shore was used to model the probability that a particular common bottlenose dolphin group seen in coastal waters was of the coastal versus offshore morphotype (Garrison *et al.* 2017a). North of Cape Hatteras during summer months, there is strong separation between the coastal and offshore morphotypes (Kenney 1990; Garrison *et al.* 2017a), and the coastal morphotype is nearly completely absent in waters >20 m depth. South of Cape Hatteras, the regression analysis indicated that the coastal morphotype is most common in waters <20 m deep, but occurs at lower densities over the continental shelf, in waters >20 m deep, where it overlaps to some degree with the offshore morphotype. For the purposes of defining stock boundaries, estimating abundance, and identifying bycaught samples, the offshore boundary of the SMCS is defined as the 20-m isobath north of Cape Hatteras and the 200-m isobath south of Cape Hatteras. In summary, this stock is best delimited in warm water months, when it overlaps least with other stocks, as common bottlenose dolphins of the coastal morphotype that occupy coastal waters from the shoreline to 200 m depth from Cape Lookout to Cape Hatteras, North Carolina, and coastal waters 0–20 m in depth from Cape

Hatteras to Assateague, Virginia, including Chesapeake Bay (Hayes *et al.* 2018).

Pilot Whale

Long-finned and short-finned pilot whales occur in the Western Atlantic. Both species of pilot whale are more generally found along the edge of the continental shelf at depths of 100 to 1,000 m (330 to 3,300 ft), choosing areas of high relief or submerged banks. Long-finned pilot whales in the western North Atlantic are more pelagic, occurring in especially high densities in winter and early spring over the continental slope, then moving inshore and onto the shelf in summer and autumn following squid and mackerel populations (Reeves *et al.* 2002). They frequently travel into the central and northern Georges Bank, Great South Channel, and northward into the Gulf of Maine areas during the late spring through late fall (Hayes *et al.* 2019). Short-finned pilot whales prefer tropical, subtropical, and warm temperate waters (Jefferson *et al.* 2015). The short-finned pilot whale mostly ranges from New Jersey south through Florida, the northern Gulf of Mexico, and the Caribbean without any seasonal movements or concentrations (Hayes *et al.* 2019). The latitudinal ranges of the two species remain uncertain, although south of Cape Hatteras, most pilot whale sightings are expected to be short-finned pilot whales, while north of ~42° N most pilot whales are expected to be long-finned pilot whales (Hayes *et al.* 2019).

Risso's Dolphin

Risso's dolphins are distributed worldwide in tropical and temperate seas and in the Northwest Atlantic occur from Florida to eastern Newfoundland. The species has an apparent preference for steep, shelf-edge habitats between about 400 to 1,000 m (1,312 to 3,280 ft) deep (Baird 2009). Risso's dolphin of the western North Atlantic stock prefers temperate to tropical waters typically from 15 to 20 °C (59 to 68 °F) and are rarely found in waters below 10 °C (50 °F). Off the northeastern U.S. coast, Risso's dolphins are distributed along the continental shelf edge from Cape Hatteras northward to Georges Bank during spring, summer, and autumn. In winter, the range is in the mid-Atlantic Bight and extends outward into oceanic waters. In general, the population occupies the mid-Atlantic continental shelf edge year round (Hayes *et al.* 2019).

Common Dolphin

The common dolphin is found worldwide in temperate to subtropical seas. In the North Atlantic, common dolphins are commonly found over the continental shelf between the 200 m and 2,000 m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge. Common dolphins have been noted to be associated with Gulf Stream features (CETAP 1982; Selzer and Payne 1988; Waring *et al.* 1992). The species is seasonally found in abundance between Cape Hatteras and Georges Bank from mid-January to May. Between mid-summer and fall they migrate onto Georges Bank and the Scotian Shelf, and large aggregations occur on Georges Bank in fall (Reeves *et al.* 2002; Hayes *et al.* 2019). The species is less common south of Cape Hatteras, although schools have been reported as far south as the Georgia/South Carolina border (Hayes *et al.* 2019).

Sperm Whale

The distribution of the sperm whale in the U.S. EEZ occurs on the continental shelf edge, over the continental slope, and into mid-ocean regions (Waring *et al.* 2019). The basic social unit of the sperm whale appears to be the mixed school of adult females plus their calves and some juveniles of both sexes, normally numbering 20–40 animals in all. There is evidence that some social bonds persist for many years (Christal *et al.* 1998). This species forms stable social groups, site fidelity, and latitudinal range limitations in groups of females and juveniles (Whitehead, 2002). In winter, sperm whales concentrate east and northeast of Cape Hatteras. In spring, distribution shifts northward to east of Delaware and Virginia, and is widespread throughout the central Mid-Atlantic Bight and the southern part of Georges Bank. In the fall, sperm whale occurrence on the continental shelf south of New England reaches peak levels, and there remains a continental shelf edge occurrence in the Mid-Atlantic Bight (Waring *et al.* 2015). Off the coast of Virginia, sperm whales have recently been observed spending a significant amount of time near Norfolk Canyon and in waters over 1,800 m deep (6,000 ft; U.S. Navy n.d. 2017).

Atlantic Spotted Dolphin

Atlantic spotted dolphins are found in tropical and warm temperate waters along the continental shelf from 10 to 200 m (33 to 650 ft) deep to slope waters greater than 500 m (1,640 ft). Their range extends from southern New England, south to Gulf of Mexico and

the Caribbean to Venezuela (Waring *et al.* 2014). This stock regularly occurs in continental shelf waters south of Cape Hatteras and in continental shelf edge and continental slope waters north of this region (Waring *et al.* 2014). There are two forms of this species, with the larger ecotype inhabiting the continental shelf and is usually found inside or near the 200 m isobaths (Waring *et al.* 2014).

Harbor Porpoise

The harbor porpoise inhabits shallow, coastal waters, often found in bays, estuaries, and harbors. In the western Atlantic, they occur from Cape Hatteras north to Greenland. During summer (July to September), harbor porpoises are concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150 m deep with a few sightings in the upper Bay of Fundy and on Georges Bank. During fall (October–December) and spring (April–June), harbor porpoises are widely dispersed from New Jersey to Maine, with lower densities farther north and south. They occur from the coastline to deep waters (>1,800 m), although the majority of the population occurs over the continental shelf. The harbor porpoise is likely to occur in the waters of the mid-Atlantic during winter months, as this species prefers cold temperate and subarctic waters (Hayes *et al.* 2019). Harbor porpoise generally move out of the Mid-Atlantic during spring, migrating north to the Gulf of Maine. There does not appear to be a temporally coordinated migration or a specific migratory route to and from the Bay of Fundy region (Hayes *et al.* 2018).

Gray Seal

The gray seal occurs on both coasts of the Northern Atlantic Ocean and are divided into three major populations (Hayes *et al.* 2019). The western north Atlantic stock occurs in eastern Canada and the northeastern United States, occasionally as far south as North Carolina. Gray seals inhabit rocky coasts and islands, sandbars, ice shelves and icebergs (Hayes *et al.* 2019). In the United States, gray seals congregate in the summer to give birth at four established colonies in Massachusetts and Maine (Hayes *et al.* 2019). From September through May, they disperse and can be abundant as far south as New Jersey. The range of gray seals appears to be shifting as they are regularly being reported further south than they were historically (Rees *et al.* 2016).

Gray seals are uncommon in Virginia and the Chesapeake Bay. Only 15 gray seal strandings were documented in

Virginia from 1988 through 2013 (Barco and Swingle 2014). They are rarely found resting on the rocks around the portal islands of the Chesapeake Bay Bridge Tunnel (CBBT) from December through April alongside harbor seals. Seal observation surveys conducted at the CBBT recorded one gray seal in each of the 2014/2015 and 2015/2016 seasons while no gray seals were reported during the 2016/2017 and 2017/2018 seasons (Rees *et al.* 2016, Jones *et al.* 2018).

Harbor Seal

Harbor seals are the most abundant seals in the waters of the eastern United States and are commonly found in all nearshore waters of the Atlantic Ocean from Newfoundland, Canada southward to northern Florida (Hayes *et al.* 2019). While harbor seals occur year-round north of Cape Cod, they only occur south of Cape Cod (southern New England to New Jersey) during winter migration, typically September through May (Kenney and Vigness-Raposa 2010; Hayes *et al.* 2019). During the summer, most harbor seals can be found north of Massachusetts within the coastal waters of central and northern Maine as well as the Bay of Fundy (Hayes *et al.* 2019).

Since July 2018, elevated numbers of harbor seal and gray seal mortalities have occurred across Maine, New Hampshire and Massachusetts. This

event has been declared a UME. Additionally, stranded seals have shown clinical signs as far south as Virginia, although not in elevated numbers. Therefore the UME investigation now encompasses all seal strandings from Maine to Virginia. As of March, 2020 there a total of 3,152 reported strandings (of all species), though only 10 occurred in Virginia while 8 were recorded in Maryland. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted thus far, the main pathogen found in the seals is phocine distemper virus. NMFS is performing additional testing to identify any other factors that may be involved in this UME. This UME is non-active and pending closure, and therefore, it is not discussed further in this notice. Information on this UME is available online at: www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2020-pinniped-unusual-mortality-event-along.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure

to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 1.

TABLE 3—MARINE MAMMAL HEARING GROUPS [NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.* 2006; Kastelein *et al.* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. 16 marine mammal species (14 cetacean and two phocid pinniped species) have the reasonable potential to co-occur with

the proposed survey activities. Please refer to Table 2. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.*, all mysticete species), eight are classified as mid-frequency cetaceans (*i.e.*, all delphinids and the sperm whale), and one is classified as high-frequency cetaceans (*i.e.*, harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat.

Detailed descriptions of the potential effects of similar specified activities have been provided in other recent **Federal Register** notices, including for survey activities using the same methodology, over a similar amount of time, and occurring in the Mid-Atlantic region, including waters off of North Carolina and Virginia (*e.g.*, 85 FR 36537, June 17, 2020; 86 FR 43212, August 6, 2021). No significant new information is available, and we refer the reader to these documents rather than repeating the details here. The Estimated Take section includes a quantitative analysis of the number of individuals that are

expected to be taken by Dominion Energy's activity. The Negligible Impact Analysis and Determination section considers the potential effects of the specified activity, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Background on Active Acoustic Sound Sources and Acoustic Terminology

This subsection contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to the summary of the potential effects of the specified activity on marine mammals. For general information on sound and its interaction with the marine environment, please see, *e.g.*, Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the "loudness" of a sound and is typically described using the relative unit of the decibel. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude. Therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and

negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 $\mu\text{Pa}^2\text{-s}$) represents the total energy in a stated frequency band over a stated time interval or event and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.*, 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0–pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for sound produced by the pile driving activity considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.*, vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a

main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward, 1997 in Southall *et al.* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-

pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (e.g., Greene and Richardson, 1988).

Pulsed sound sources (e.g., airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (e.g., rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Sparkers and boomers produce pulsed signals with energy in the frequency ranges specified in Table 1. The amplitude of the acoustic wave emitted from sparker sources is equal in all directions (i.e., omnidirectional), while other sources planned for use during the proposed surveys have some degree of directionality to the beam, as specified in Table 1.

Summary on Specific Potential Effects of Acoustic Sound Sources

Underwater sound from active acoustic sources can include one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking. The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing

threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.* 2007).

Animals in the vicinity of Dominion Energy's proposed HRG survey activity are unlikely to incur even TTS due to the characteristics of the sound sources, which include relatively low source levels (176 to 205 dB re 1 μ Pa-m) and generally very short pulses and potential duration of exposure. These characteristics mean that instantaneous exposure is unlikely to cause TTS, as it is unlikely that exposure would occur close enough to the vessel for received levels to exceed peak pressure TTS criteria, and that the cumulative duration of exposure would be insufficient to exceed cumulative sound exposure level (SEL) criteria. Even for high-frequency cetacean species (e.g., harbor porpoises), which have the greatest sensitivity to potential TTS, individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (i.e., intermittent exposure results in lower levels of TTS). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range. Further, the restricted beam shape of many of HRG survey devices planned for use (Table 1) makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel.

Behavioral disturbance may include a variety of effects, including subtle changes in behavior (e.g., minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially

severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (e.g., species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal.

In addition, sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (e.g., those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (e.g., snapping shrimp, wind, waves, precipitation) or anthropogenic (e.g., shipping, sonar, seismic exploration) in origin. Marine mammal communications would not likely be masked appreciably by the acoustic signals given the directionality of the signals for most HRG survey equipment types planned for use (Table 1) and the brief period when an individual mammal is likely to be exposed.

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (e.g., crustaceans, cephalopods, fish, zooplankton; i.e., effects to marine mammal habitat). Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. The most likely impacts (if any) for most prey species in a given area would be temporary avoidance of the area. Surveys using active acoustic sound sources move through an area relatively quickly, limiting exposure to multiple pulses. In all cases, sound levels would return to ambient once a survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly. Finally, the HRG survey equipment will not have significant impacts to the seafloor and does not represent a source of pollution.

Vessel Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. These interactions are typically associated with large whales, which are less maneuverable than are smaller cetaceans or pinnipeds in relation to large vessels. Ship strikes generally involve commercial shipping vessels, which are generally larger and of which there is much more traffic in the ocean than geophysical survey vessels. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (e.g., commercial shipping). For vessels used in geophysical survey activities, vessel speed while towing gear is typically only 4–5 knots (7.4–9.3 km/hr). At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are so low as to be discountable. At average transit speed for geophysical survey vessels, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds. Notably in the Jensen and Silber study, no strike incidents were reported for geophysical survey vessels during that time period.

The potential effects of Dominion Energy's specified survey activity are expected to be limited to Level B behavioral harassment. No permanent or temporary auditory effects, or significant impacts to marine mammal habitat, including prey, are expected.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of "small numbers" and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to HRG sources. Based primarily on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated (even absent mitigation) nor proposed to be authorized. Consideration of the anticipated effectiveness of the mitigation measures (i.e., exclusion zones (EZs) and shutdown measures) discussed in detail below in the Proposed Mitigation section, further strengthens the conclusion that Level A harassment is not a reasonably anticipated outcome of the survey activity. As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (e.g., previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (e.g., frequency, predictability, duty cycle), the environment (e.g., bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.* 2007, Ellison

et al. 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 μ Pa (rms) for the impulsive sources (i.e., boomers, sparkers) evaluated here for Dominion Energy's proposed activity.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). For more information, see NMFS's 2018 Technical Guidance, which may be accessed at www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.

Dominion Energy's proposed activity includes the use of impulsive (i.e., sparkers and boomers) sources. However, as discussed above, NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise through use of the sources proposed for use here, and the potential for Level A harassment is not evaluated further in this document. Please see Dominion Energy's application for details of a quantitative exposure analysis exercise, i.e., calculated Level A harassment isopleths and estimated Level A harassment exposures. Maximum estimated Level A harassment isopleths were less than 6 m for all sources and hearing groups with the exception of an estimated 54 m zone calculated for high-frequency cetaceans during use of the Applied Acoustics S-Boom Boomer, (see Table 1 for source characteristics). Dominion Energy did not request authorization of take by Level A harassment, and no take by Level A harassment is proposed for authorization by NMFS.

Ensonified Area

NMFS has developed a user-friendly methodology for estimating the extent of the Level B harassment isopleths associated with relevant HRG survey equipment (NMFS, 2020). This

methodology incorporates frequency and directionality to refine estimated ensonified zones. For acoustic sources that operate with different beamwidths, the maximum beamwidth was used, and the lowest frequency of the source was used when calculating the frequency-dependent absorption coefficient (Table 1).

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to harassment thresholds. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 1 shows the HRG equipment types that may be used during the proposed surveys and the source levels associated with those HRG equipment types.

Results of modeling using the methodology described above indicated that, of the HRG survey equipment planned for use by Dominion Energy that has the potential to result in Level B harassment of marine mammals, the Geo Marine Dual 400 Sparker 800J would produce the largest Level B harassment isopleth (141 m; see Table 6–3 of Dominion Energy’s application). The Applied Acoustics S-Boom (Triple Plate Boomer 1000J) would produce a Level B harassment isopleth of 22 m. Although Dominion Energy does not expect to use the Geo Marine Dual 400 Sparker 800J source on all planned survey days, it proposes to assume, for purposes of analysis, that the sparker would be used on all survey days. This is a conservative approach, as the actual sources used on individual survey days may produce smaller harassment distances.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory and the Marine-life Data and Analysis Team, based on the best available marine mammal data from 1992–2019

obtained in a collaboration between Duke University, the Northeast Regional Planning Body, the University of North Carolina Wilmington, the Virginia Aquarium and Marine Science Center, and NOAA (Roberts *et al.* 2016a; Curtice *et al.* 2018), represent the best available information regarding marine mammal densities in the survey area. More recently, these data have been updated with new modeling results and include density estimates for pinnipeds (Roberts *et al.* 2016, 2017, 2018, 2020, 2021).

The density data presented by Roberts *et al.* (2016b, 2017, 2018, 2020, 2021) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from eight physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.* 2016). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at <https://seamap.env.duke.edu/models/Duke/EC/>. Marine mammal density estimates in the survey area (animals/km²) were obtained using the most recent model results for all taxa (Roberts *et al.* 2016, 2017, 2018, 2020, 2021), with the exception of the North Atlantic right whale (discussed below). The updated models incorporate additional sighting data, including sightings from NOAA’s Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys.

For the exposure analysis, the density data from Roberts *et al.* (2016, 2017, 2018, 2020, 2021) were mapped using a geographic information system (GIS). For the full survey area, Dominion Energy averaged the densities of each species as reported by Roberts *et al.* (2016, 2017, 2018, 2020, 2021) by season; thus, a density was calculated for each species for spring, summer, fall and winter. To be conservative, the greatest seasonal density calculated for each species was then carried forward in the exposure analysis. The largest estimated seasonal densities (animals per km²) of all marine mammal species that may be taken by the proposed survey, for all survey areas, is shown in Table 4, below. Below, we discuss how densities were assumed to apply to specific species for which the Roberts *et al.* (2016b, 2017, 2018, 2020, 2021) models provide results at the genus or

guild level. Additional data regarding average group sizes from survey effort in the region was considered to ensure take estimates are adequate to account for anticipated real-world encounter rates.

For bottlenose dolphin densities, Roberts *et al.* (2016b, 2017, 2018) does not differentiate by stock. Given the southern coastal migratory stock’s propensity to occur in waters shallower than the 25 m (82 ft) isobath north of Cape Hatteras (Reeves *et al.* 2002; Hayes *et al.* 2018), the project’s offshore export cable route corridor segment was roughly divided along the 25 m (82 ft) isobath. Roughly 90 percent of the cable corridor is 25 m (82 ft) or less in depth. The Lease Area is mostly located within depths exceeding 25 m (82 ft), where the southern coastal migratory stock would be unlikely to occur. Roughly 25 percent of the Lease Area survey segment is 25 m (82 ft) or less in depth. Therefore, to account for the potential for mixed stocks within the Project’s offshore export cable route corridor, 90 percent of the estimated take calculation in that area is assumed to be of individuals in the southern coastal migratory stock and the remaining applied to the Western North Atlantic offshore stock within the Project’s offshore export cable route corridor survey area. Within the Lease Area, 25 percent of the estimated take calculation is assumed to be of individuals from the southern coastal migratory stock and the remaining applied to the Western North Atlantic offshore stock.

The seasonality, feeding preferences, and habitat use by gray seals often overlaps with that of harbor seals in the survey areas. The density models produced by Roberts *et al.* (2016b, 2017, 2018) do not differentiate between gray seals and harbor seals. Rather, the model provides one density estimate for “seals.” Therefore, for the density values reported in the IHA application, Dominion Energy assumed that half of the seals were gray seals, and the other half harbor seals.

Dominion Energy used model Version 10 (Roberts *et al.* 2021) to estimate the density of North Atlantic right whales. While two more recent versions (Version 11 and Version 11.1) of the model are available, the updates in these versions do not affect the densities in the project area. The update in Version 11 pertains to Cape Cod Bay only, which is outside of the CVOW project area. Density surfaces in Version 11.1 did not change from Version 11; rather Version 11.1 includes uncertainty surfaces as well as density surfaces.

TABLE 4—MAXIMUM SEASONAL DENSITIES OF MARINE MAMMALS IN THE LEASE AREA AND OECC
[Animals per 100 km²]

Species	Lease area/OECC
North Atlantic right whale	0.111
Humpback whale	0.060
Fin whale	0.184
Sei whale	0.001
Minke whale	0.047
Sperm whale	0.003
Pilot whale	0.029
Bottlenose dolphin (Offshore)	10.614
Bottlenose dolphin (Southern Migratory Coastal).	
Common dolphin	2.163
Atlantic white-sided dolphin	0.600
Atlantic spotted dolphin	0.311
Risso's dolphin	0.008
Harbor porpoise	0.794
Gray seal	0.514
Harbor seal.	

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to harassment thresholds are calculated, as described above. Those distances are then used to calculate the area(s) around the HRG survey equipment predicted to be ensonified to sound levels that exceed harassment thresholds. The area estimated to be ensonified to relevant thresholds in a single day (zone of influence (ZOI)) is then calculated, based on areas predicted to be ensonified around the HRG survey equipment (*i.e.*, 141 m) and the

estimated trackline distance traveled per day by the survey vessel (*i.e.*, 58 km). Based on the maximum estimated distance to the Level B harassment threshold of 141 m (Geo Marine Dual 400 Sparker 800J) and the maximum estimated daily track line distance of 58 km, the ZOI is estimated to be 16.4 km² during Dominion Energy's planned HRG surveys. As described above, this is a conservative estimate as it assumes the HRG source that results in the greatest distance to the Level B harassment isopleth would be operated at all times during all vessel days.

$$ZOI = (\text{Distance/day} \times 2r) + \pi r^2$$

Where r is the linear distance from the source to the harassment isopleth.

Potential daily Level B harassment takes are estimated by multiplying the average annual marine mammal

densities (animals/km²), as described above, by the ZOI. Estimated numbers of each species taken over the duration of the authorization are calculated by multiplying the potential daily Level B harassment takes by the total number of vessel days. The product is then rounded, to generate an estimate of the total number of instances of harassment expected for each species over the duration of the survey. A summary of this method is illustrated in the following formula:

$$\text{Estimated Take} = D \times ZOI \times \text{vessel days}$$

Where D = average species density (animals/km²), ZOI = maximum daily ensonified area to relevant threshold, and vessel days = 244.

Take by Level B harassment proposed for authorization is shown in Table 5.

TABLE 5—TOTAL NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS PROPOSED FOR AUTHORIZATION AND PROPOSED TAKES AS A PERCENTAGE OF POPULATION

Species	Estimated takes by Level B harassment	Proposed takes by Level B harassment ^a	Abundance	Proposed takes as a percent of stock
North Atlantic right whale	4.4	4	368	1.4
Humpback whale	2.4	2	1,396	<1
Fin whale	7.4	7	6,802	<1
Sei whale	0.04	0	6,292	0
Minke whale	1.9	2	21,968	<1
Sperm whale	0.0	0	4,349	0
Short-finned pilot whale	1.2	20	28,924	<1
Long-finned pilot whale			39,215	<1
Bottlenose dolphin (Western North Atlantic Offshore stock)	279.2	279	62,851	<1
Bottlenose dolphin (Southern Migratory Coastal stock)	147.1	147	3,751	3.9
Common dolphin	86.6	4,880	172,974	2.8
Atlantic white-sided dolphin	24.1	25	93,233	<1
Atlantic spotted dolphin	12.5	4,880	39,921	12.4
Risso's dolphin	0.3	25	35,215	<1
Harbor porpoise	31.8	32	95,543	<1
Gray seal	12	12	451,431	<1
Harbor seal	12	12	61,336	<1

The proposed take listed in Table 5 generally reflects the estimated take calculation described above (Estimated Take = $D \times ZOI \times \text{vessel days}$). Further, take estimates for pilot whale and Risso's dolphin have been modified to reflect group size estimates, and take estimates for Atlantic spotted dolphin and common dolphin have been modified to reflect previous monitoring in the CVOW project area, as described further below.

Roberts *et al.* (2017) provides a density for all pilot whales that does not differentiate between short-finned and long-finned pilot whales, both of which could be in the project area. However, the take estimate for pilot whales was further adjusted to account for group size. Dominion Energy estimates that a group of 20 pilot whales (Reeves *et al.* 2002) may be taken by Level B harassment during the surveys. While the take calculation described above estimates no takes of Risso's dolphin, Dominion Energy also conservatively estimates that a group of 25 Risso's dolphins (Reeves *et al.*, 2002) may be taken by Level B harassment during the surveys. NMFS concurs with these estimates, and proposes to authorize 20 takes by Level B harassment of pilot whales and 25 takes by Level B harassment of Risso's dolphin.

Previous monitoring in the CVOW project area (Dominion Energy, 2021; 86 FR 21298; April 22, 2021 and 85 FR 81879; December 17, 2020) indicates that the calculated take of Atlantic spotted dolphin and common dolphin is too low. Given previous monitoring, Dominion Energy conservatively estimated that two pods of common dolphins, each averaging 10 individuals, may be taken by Level B harassment on each vessel day (2 pods \times 10 individuals \times 244 vessel days = 4,880 takes by Level B harassment of common dolphin). Dominion Energy conservatively estimates that one pod of Atlantic spotted dolphins, averaging 20 individuals, may be taken by Level B harassment on each vessel day (1 pod \times 20 individuals \times 244 vessel days = 4,880 takes by Level B harassment of Atlantic spotted dolphin). While these estimates are likely conservative, NMFS concurs, and proposes to authorize 4,880 takes by Level B harassment of both common dolphin and Atlantic spotted dolphin.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular

attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

NMFS proposes the following mitigation measures be implemented during Dominion Energy's proposed marine site characterization surveys. Pursuant to section 7 of the ESA, Dominion Energy would also be required to adhere to relevant Project Design Criteria (PDC) of the NMFS' Greater Atlantic Regional Fisheries Office (GARFO) programmatic consultation (specifically PDCs 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast (<https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation>).

Marine Mammal Exclusion Zones and Harassment Zones

Marine mammal exclusion zones (EZ) would be established around the HRG survey equipment and monitored by protected species observers (PSOs):

- 500 m EZ for North Atlantic right whales during use of specified acoustic sources (sparkers, boomers, and non-parametric sub-bottom profilers).
- 100 m EZ for all other marine mammals, with certain exceptions specified below, during operation of impulsive acoustic sources (boomer and/or sparker).

If a marine mammal is detected approaching or entering the EZs during the HRG survey, the vessel operator would adhere to the shutdown procedures described below to minimize noise impacts on the animals. These stated requirements will be included in the site-specific training to be provided to the survey team.

Pre-Start Clearance

Marine mammal clearance zones would be established around the HRG survey equipment and monitored by protected species observers (PSOs):

- 500 m for all ESA-listed marine mammals; and
- 100 m for non all other marine mammals.

Dominion Energy would implement a 30-minute pre-start clearance period prior to the initiation of ramp-up of specified HRG equipment (see exception to this requirement in the *Shutdown Procedures* section below). During this period, clearance zones will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective clearance zone. If a marine mammal is observed within a clearance zone during the pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective exclusion zone or until an additional time period has elapsed with no further sighting (*i.e.*, 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

Ramp-Up of Survey Equipment

A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the acoustic source when technically feasible. The ramp-up procedure would be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the survey area by allowing them to vacate the area prior to the commencement of survey

equipment operation at full power. Operators should ramp up sources to half power for 5 minutes and then proceed to full power.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective exclusion zone. Ramp-up will continue if the animal has been observed exiting its respective exclusion zone or until an additional time period has elapsed with no further sighting (*i.e.*, 15 minutes for small odontocetes and seals and 30 minutes for all other species).

Ramp-up may occur at times of poor visibility, including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at night where operational planning cannot reasonably avoid such circumstances.

Shutdown Procedures

An immediate shutdown of the impulsive HRG survey equipment would be required if a marine mammal is sighted entering or within its respective exclusion zone. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement between the Lead PSO and vessel operator should be discussed only after shutdown has occurred. Subsequent restart of the survey equipment can be initiated if the animal has been observed exiting its respective exclusion zone or until an additional time period has elapsed (*i.e.*, 15 minutes for harbor porpoise, 30 minutes for all other species).

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone, shutdown would occur.

If the acoustic source is shut down for reasons other than mitigation (*e.g.*, mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective exclusion zones. If the acoustic source is shut down for a period longer than 30 minutes, then pre-clearance and ramp-up procedures will be initiated as described in the previous section.

The shutdown requirement would be waived for pinnipeds and for small delphinids of the following genera: *Delphinus*, *Lagenorhynchus*, *Stenella*, and *Tursiops*. Specifically, if a delphinid from the specified genera or a pinniped is visually detected

approaching the vessel (*i.e.*, to bow ride) or towed equipment, shutdown is not required. Furthermore, if there is uncertainty regarding identification of a marine mammal species (*i.e.*, whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgement in making the decision to call for a shutdown. Additionally, shutdown is required if a delphinid or pinniped detected in the exclusion zone and belongs to a genus other than those specified.

Shutdown, pre-start clearance, and ramp-up procedures are not required during HRG survey operations using only non-impulsive sources (*e.g.*, echosounders).

Vessel Strike Avoidance

Dominion Energy must adhere to the following measures except in the case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

- Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone based on the appropriate separation distance around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.*, PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish protected species from other phenomena and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammal;

- Members of the monitoring team will consult NMFS North Atlantic right whale reporting system and Whale Alert, as able, for the presence of North Atlantic right whales throughout survey operations, and for the establishment of a DMA. If NMFS should establish a DMA in the survey area during the survey, the vessels will abide by speed restrictions in the DMA;

- All survey vessels, regardless of size, must observe a 10-knot (18.5 km/hr) speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes including seasonal

management areas (SMAs) and dynamic management areas (DMAs) when in effect;

- All vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 will operate at speeds of 10 knots (18.5 km/hr) or less at all times;

- All vessels must reduce their speed to 10 knots (18.5 km/hr) or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel;

- All vessels must maintain a minimum separation distance of 500 m from right whales and other ESA-listed large whales;

- If a whale is observed but cannot be confirmed as a species other than a right whale or other ESA-listed large whale, the vessel operator must assume that it is a right whale and take appropriate action;

- All vessels must maintain a minimum separation distance of 100 m from non-ESA listed whales;

- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.*, for animals that approach the vessel); and

- When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (e.g., attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Project-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Based on our evaluation of the applicant's proposed measures, as well

as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).

- Mitigation and monitoring effectiveness.

Proposed Monitoring Measures

Visual monitoring will be performed by qualified, NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. Dominion Energy would employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for their designated task. On a case-by-case basis, non-independent observers may be approved by NMFS for limited, specific duties in support of approved, independent PSOs on smaller vessels with limited crew capacity operating in nearshore waters. Section 5 of the draft IHA contains further details regarding PSO approval.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including exclusion zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established exclusion zones during survey activities. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

During all HRG survey operations (*e.g.*, any day on which use of an HRG source is planned to occur), a minimum of one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.*, from 30 minutes prior to sunrise through 30 minutes following sunset). Two PSOs will be on watch during nighttime operations. The PSO(s) would ensure 360° visual coverage around the vessel from the most appropriate observation posts and would conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of 4 consecutive hours

followed by a break of at least 2 hours between watches and may conduct a maximum of 12 hours of observation per 24-hr period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all nearby survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to exclusion zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.*, daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team. Data on all PSO observations would be recorded based on standard PSO collection requirements. This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.*, species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.*, noted behavioral disturbances).

Proposed Reporting Measures

Within 90 days after completion of survey activities or expiration of this IHA, whichever comes sooner, a draft technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals observed during survey activities (by species, when known), summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final

marine mammal and acoustic monitoring reports must be submitted to PR.ITP.MonitoringReports@noaa.gov and ITP.Davis@noaa.gov. The report must contain at minimum, the following:

- PSO names and affiliations;
- Dates of departures and returns to port with port name;
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;
- Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts;
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon;
- Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.*, vessel traffic, equipment malfunctions); and
- Survey activity information, such as type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.*, pre-start clearance survey, ramp-up, shutdown, end of operations, *etc.*).

If a marine mammal is sighted, the following information should be recorded:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Vessel location at time of sighting;
- Water depth;
- Direction of vessel's travel (compass direction);
- Direction of animal's travel relative to the vessel;
- Pace of the animal;
- Estimated distance to the animal and its heading relative to vessel at initial sighting;
- Identification of the animal (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species;
- Estimated number of animals (high/low/best);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, *etc.*);

- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.*, number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach and/or closest distance from the center point of the acoustic source;
- Platform activity at time of sighting (*e.g.*, deploying, recovering, testing, data acquisition, other); and
- Description of any actions implemented in response to the sighting (*e.g.*, delays, shutdown, ramp-up, speed or course alteration, *etc.*) and time and location of the action.

If a North Atlantic right whale is observed at any time by PSOs or personnel on any project vessels, during surveys or during vessel transit, Dominion Energy must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System: (866) 755-6622. North Atlantic right whale sightings in any location may also be reported to the U.S. Coast Guard via channel 16.

In the event that Dominion Energy personnel discover an injured or dead marine mammal, Dominion Energy will report the incident to the NMFS Office of Protected Resources (OPR) and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report would include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
2. Species identification (if known) or description of the animal(s) involved;
3. Condition of the animal(s) (including carcass condition if the animal is dead);
4. Observed behaviors of the animal(s), if alive;
5. If available, photographs or video footage of the animal(s); and
6. General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Dominion Energy would report the incident to the NMFS OPR and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;

- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.*, dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and

ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (e.g., as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 2, given that NMFS expects the anticipated effects of the proposed survey to be similar in nature. Where there are meaningful differences between species or stocks—as is the case of the North Atlantic right whale—they are included as separate subsections below. NMFS does not anticipate that serious injury or mortality would occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is proposed to be authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (e.g., Southall *et al.* 2007). Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. As described above, Level A harassment is not expected to occur given the nature of the operations, the estimated size of the Level A harassment zones, and the required shutdown zones for certain activities.

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141 m. Although this distance is assumed for all survey activity in estimating take numbers proposed for authorization and evaluated here, in reality, the Geo Marine Dual 400 Sparker would likely not be used across the entire 24-hour period and across all 244 vessel days. The other acoustic sources operating below 200 kHz that Dominion Energy has included in their application produce Level B harassment zones below 22 m. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly

impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the proposed survey area and there are no feeding areas known to be biologically important to marine mammals within the proposed survey area. There is no designated critical habitat for any ESA-listed marine mammals in the proposed survey area.

North Atlantic Right Whales

The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated North Atlantic right whale mortalities began in June 2017, and there is an active UME. Overall, preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of right whales. As noted previously, the proposed survey area overlaps a migratory corridor BIA for North Atlantic right whales. Due to the fact that the impacts of the proposed survey are expected to be of low severity (as described in the Potential Effects of Specified Activities on Marine Mammals and their Habitat), the proposed survey activities are temporary, and the spatial extent of sound produced by the survey would be very small relative to the spatial extent of the available migratory habitat in the BIA (the overlap between the BIA and the proposed survey area would cover approximately 4,000 km² of the 269,448 km² BIA), right whale migration is not expected to be impacted by the proposed survey. Given the relatively small size of the ensonified area, it is unlikely that prey availability would be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during Dominion Energy's proposed activities. The 500-m shutdown zone for right

whales is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.*, sparker) is estimated to be 141 m, and thereby minimizes the potential for behavioral harassment of this species.

As noted previously, Level A harassment is not expected due to the small PTS zones associated with HRG equipment types proposed for use. The proposed authorization of take by Level B harassment of North Atlantic right whale is not expected to exacerbate or compound upon the ongoing UME. The limited takes of North Atlantic right whale by Level B harassment proposed for authorization are expected to be of a short duration, and given the number of estimated takes, repeated exposures of the same individual are not expected. Further, given the relatively small size of the ensonified area during Dominion Energy's proposed activities, it is unlikely that North Atlantic right whale prey availability would be adversely affected. Accordingly, NMFS does not anticipate North Atlantic right whales takes that would result from Dominion Energy's proposed activities would impact annual rates of recruitment or survival of any individuals. Thus, any takes that occur would not result in population level impacts.

Other Marine Mammal Species With Active UMEs

As noted previously, there are several active UMEs occurring in the vicinity of Dominion Energy's proposed survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

The required mitigation measures are expected to reduce the number and/or severity of proposed takes for all species listed in Table 2, including those with active UMEs, to the level of least practicable adverse impact. In

particular, they would provide animals the opportunity to move away from the sound source throughout the survey area before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment. As discussed previously, take by Level A harassment (injury) is considered unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use, and is not proposed for authorization. Implementation of required mitigation would further reduce this potential.

NMFS expects that takes would be in the form of short-term Level B behavioral harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures would further reduce exposure to sound that could result in more severe behavioral harassment.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or proposed to be authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or proposed for authorization;
- Foraging success is not likely to be impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be by Level B behavioral harassment only consisting of brief startling reactions and/or temporary avoidance of the survey area;
- While the survey area is within areas noted as a migratory BIA for North Atlantic right whales, the activities would occur in such a comparatively small area such that any avoidance of

the survey area due to activities would not affect migration. In addition, mitigation measures require shutdown at 500 m (almost four times the size of the Level B harassment isopleth (141 m), which minimizes the effects of the take on the species; and

- The proposed mitigation measures, including effective visual monitoring, and shutdowns are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS proposes to authorize incidental take (by Level B harassment only) of 16 marine mammal species (with 17 managed stocks). The total amount of takes proposed for authorization relative to the best available population abundance is less than 33 percent for all stocks (Table 5).

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or

species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS Office of Protected Resources (OPR) consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS OPR is proposing to authorize the incidental take of North Atlantic right, sei, fin, sperm whales, which are listed under the ESA. NMFS has determined that this activity falls within the scope of activities analyzed in NMFS GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Dominion Energy authorizing take, by Level B harassment, incidental to conducting marine site characterization surveys off of Virginia from May 2022 to May 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed surveys. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public

comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 1, 2022.

Kimberly Damon-Randall,
Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 2022-07258 Filed 4-5-22; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB930]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Management Team (HMSMT) is holding an online meeting, which is open to the public.

DATES: The online meeting will be held Friday, April 22, 2022, from 10 a.m. to 5 p.m. Pacific Time and continues Friday, April 29, 2022, from 9 a.m. to 5 p.m., Pacific Time.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503) 820-2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820-2422.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the HMSMT to review preliminary modeling results used to evaluate the range of alternatives for high priority protected species hard caps in the California large mesh drift gillnet fishery adopted by the Council in November 2021, consider any modifications or updates to model specifications, and discuss the contents of its report for the June 2022 Council meeting on its preliminary evaluation of the alternatives. The HMSMT also may discuss other topics of interest relevant to the June 2022 Council meeting agenda.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris

Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820-2412) at least 10 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 1, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022-07289 Filed 4-5-22; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID: 0648-XB931]

Research Track Assessment for Eastern Georges Bank and Georges Bank Haddock

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS will convene the Research Track Assessment Peer Review Meeting for the purpose of reviewing Eastern Georges Bank (EGB) and Georges Bank (GB) haddock stocks. The Research Track Assessment Peer Review is a formal scientific peer-review process for evaluating and presenting stock assessment results to managers for fish stocks in the offshore U.S. and Canadian waters of the northwest Atlantic. Assessments are prepared by the research track working group and reviewed by an independent panel of stock assessment experts from the Center of Independent Experts (CIE). The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the stock assessment process.

DATES: The public portion of the Research Track Assessment Peer Review Meeting will be held from March 28, 2022-March 31, 2022. The meeting will conclude on March 31, 2022 at 5:30 p.m. Eastern Standard Time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

ADDRESSES: The meeting will be held via WebEx.

Link: <https://noaanmfs-meets.webex.com/noaanmfs-meets/j.php?MTID=mfadfc0e507ed052d63c95340b3a9d9d4>.

Meeting number (access code): 2764 775 0084.

Meeting password: D9Zm8ZBMbZ8.

FOR FURTHER INFORMATION, CONTACT: Michele Traver, phone: 508–257–1642; email: michele.traver@noaa.gov.

SUPPLEMENTARY INFORMATION: For further information, please visit the Northeast Fisheries Science Center (NEFSC) website at <https://www.fisheries.noaa.gov/new-england->

mid-atlantic/population-assessments/fishery-stock-assessments-new-england-and-mid-atlantic. For additional information about research track assessment peer review, please visit the NEFSC web page at <https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/research-track-stock-assessments>.

Daily Meeting Agenda—Research Track Peer Review Meeting

The agenda is subject to change; all times are approximate and may be changed at the discretion of the Peer Review Chair.

Time	Topic	Presenter(s)	Notes
Monday, March 28, 2022			
11 a.m.–11:15 a.m	Welcome/Logistics Introductions/Agenda/Conduct of Meeting.	Michele Traver, Assessment Process Lead. Russ Brown, PopDy Branch Chief Richard Merrick and Rob Kronlund, Panel Co-Chairs.	
11:15 a.m.–12:45 p.m	Term of Reference (TOR) #2	Liz Brooks, Monica Finley	GB Catch data (US/Can), EGB Catch data (US/Can).
12:45 p.m.–1:15 p.m	Discussion/Summary	Review Panel.	
1:15 p.m.–1:45 p.m	Break.		
1:45 p.m.–3:45 p.m	TOR #3	Liz Brooks, Monica Finley	GB Surveys, EGB Surveys.
3:45 p.m.–4 p.m	Break.		
4 p.m.–4:30 p.m	Discussion/Summary	Review Panel.	
4:30 p.m.–4:45 p.m	Public Comment	Public.	
4:45 p.m	Adjourn.		
Tuesday, March 29, 2022			
11 a.m.–11:05 a.m	Welcome/Logistics	Michele Traver, Assessment Process Lead. Richard Merrick and Rob Kronlund, Panel Co-Chairs.	
11:05 a.m.–1 p.m	TORs #1 and #9	Kevin Friedland, Yanjun Wang, Liz Brooks.	Ecosystem and Recruitment Processes.
1 p.m.–1:30 p.m	Discussion/Summary	Review Panel.	
1:30 p.m.–2 p.m	Break.		
2 p.m.–4 p.m	TORs #10 and #12	Yanjun Wang, Steve Cadrin	Density-Dependent Growth and Stock Structure.
4 p.m.–4:15 p.m	Break.		
4:15 p.m.–4:45 p.m	Discussion/Summary	Review Panel.	
4:45 p.m.–5 p.m	Public Comment	Public.	
5 p.m	Adjourn.		
Wednesday, March 30, 2022			
11 a.m.–11:05 a.m	Welcome/Logistics	Michele Traver, Assessment Process Lead. Richard Merrick and Rob Kronlund, Panel Co-Chairs.	
11:05 a.m.–1 p.m	TOR #4	Liz Brooks, Tom Carruthers	Mortality, Recruitment and Biomass Estimates. GB Models. EGB Models.
1 p.m.–1:30 p.m	Break.		
1:30 p.m.–4 p.m	TOR #4 cont	Liz Brooks, Tom Carruthers	Mortality, Recruitment and Biomass Estimates. GB Models. EGB Models.
4 p.m.–4:15 p.m	Break.		
4:15 p.m.–4:30 p.m	Discussion/Summary	Review Panel.	
4:30 p.m.–4:45 p.m	Public Comment	Public.	
4:45 p.m	Adjourn.		
Thursday, March 31, 2022			
11 a.m.–11:05 a.m	Welcome/Logistics	Michele Traver, Assessment Process Lead. Richard Merrick and Rob Kronlund, Panel Co-Chairs.	

Time	Topic	Presenter(s)	Notes
11:05 a.m.–1 p.m	TORs #5, #11 and #6	Liz Brooks, Tom Carruthers	BRPs. EGB Reference. Points Projections.
1 p.m.–1:30 p.m	Break.		
1:30 p.m.–3:30 p.m	TORs #8 and #7	Liz Brooks, Tom Carruthers, Brian Linton.	Alternative Assessment Approach. Research Recommendations.
3:30 p.m.–4 p.m	Discussion/Summary	Review Panel.	
4 p.m.–4:15 p.m	Public Comment	Public.	
4:15 p.m.–4:30 p.m	Break.		
4:30 p.m.–5:30 p.m	Panel Wrap-up and Report Discussion.	Review Panel.	
5:30 p.m	Adjourn..		

The meeting is open to the public; however, during the ‘Report Discussion’ session on Thursday, March 31st, the public should not engage in discussion with the Peer Review Panel.

Special Accommodations

This meeting is physically accessible to people with disabilities. Special requests should be directed to Michele Traver, via email.

Dated: March 31, 2022.

Ngagne Jafnar Gueye,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2022-07229 Filed 4-5-22; 8:45 am]
BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB918]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Navy Construction of the Multifunctional Expansion of Dry Dock 1 at Portsmouth Naval Shipyard, Kittery, Maine

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the U.S. Navy (Navy) to incidentally harass, by Level A and B harassment, marine mammals during activities associated with the Multifunctional Expansion of Dry Dock 1 at Portsmouth Naval Shipyard, Kittery, Maine

DATES: This Authorization is effective from April, 1 2022 through March 31, 2023.

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as

“mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On September 2, 2021, NMFS received a request from the Navy for an IHA to take marine mammals incidental to construction activities associated with the multifunctional expansion of Dry Dock 1 project (also referred to as P–831) at Portsmouth Naval Shipyard in Kittery, Maine. The Navy submitted a revised version of the application on December 21, 2021. The application was deemed adequate and complete on February 10, 2022. The Navy’s request is for take of harbor porpoises, harbor seals, gray seals, harp seals, and hooded seals by Level A harassment and Level B harassment. Neither the Navy nor NMFS expects serious injury or mortality to result from this activity; therefore, an IHA is appropriate.

Description of Proposed Activity

The shipyard is located in the Piscataqua River in Kittery, Maine. The Piscataqua River originates at the boundary of Dover, New Hampshire, and Eliot, Maine Multifunctional Expansion of Dry Dock 1 (P–381) is one of three projects that support the overall expansion and modification of Dry Dock 1, located in the western extent of the shipyard. The previous two projects, construction of a super flood basin (P–310) and extension of portal crane rail and utilities (P–1074) are currently under construction. Work associated with P–310 and P–1074 has been and/or is being completed under the separate IHAs issued by NMFS. The projects have been phased to support Navy mission schedules. P–381 will be constructed within the same footprint of the super flood basin over an approximated 7-year period. In-water activities are expected to occur within the first 5 years, between April 2022 and

April 2027. This IHA request is for the first year of in-water construction for P-381 occurring from April 2022 through April 2023. All work beyond year 1 is anticipated to be requested in a rulemaking/Letter of Authorization (LOA) application submission to NMFS.

The purpose of the proposed project, Multifunctional Expansion of Dry Dock 1 (P-381), is to modify the super flood basin to create two additional dry docking positions (Dry Dock 1 North and Dry Dock 1 West) in front of the existing Dry Dock 1 East. The super flood basin provides the starting point for the P-381 work (see Figure 1-2 of the application).

Year 1 construction activities will focus on the preparation of the walls and floors of the super flood basin to support the placement of the monoliths and the construction of the two dry dock positions. The primary work needed to prepare the super flood basin involves structural reinforcement of the existing berths and floor within the super flood basin, bedrock removal, and demolition of portions of the super flood basin walls. Most of the preparatory work will occur behind the existing super flood basin walls that would act as a barrier to sound and would contain underwater noise to within a small portion of the Piscataqua River (see Figure 1-3 of the application). Construction activities that could affect marine mammals are limited to in-water pile driving and removal activities, rock hammering, rotary drilling, and down-the-hole (DTH) hammering.

The construction activities are anticipated to begin in March 2022 and proceed to March 2023. In-water construction activities would occur for 365 days over a period of approximately 12 consecutive months. All in-water work capable of producing noise harmful to marine mammals will be limited to daylight hours. Pile driving days are not necessarily consecutive and certain activities may occur at the same time, decreasing the total number of in-water construction days. Vibratory pile driving and extraction is assumed to occur during 84 days of Year 1. Impact pile driving will occur during 24 days in Year 1. DTH activities would occur for 919 days and rotary drilling would occur for 282 days. Rock hammering would occur for 252 days. Overlapping activities are estimated to reduce the number of construction days by 1,172 days for a total of 365 construction days. A total of 539 shafts/borings; 2,855 holes/anchors; and 422 sheet piles would occur for this project.

Preparatory work for P-381 in Year 1 as proposed for this IHA can be generally grouped into four categories:

center wall support and tie-in, structural reinforcement of super flood basin sidewalls and entrance, mechanical bedrock removal, and demolition of super flood basin wall components. Each category involves one or more activities expected to result in harassment of marine mammals.

A detailed description of the planned project is provided in the **Federal Register** notice for the proposed IHA (87 FR 11860; March 2, 2022). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Response

A notice of NMFS's proposal to issue an IHA to the Navy was published in the **Federal Register** on March 2, 2022 (87 FR 11860). That notice described, in detail, the Navy's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received no public comment or comment letter from the Marine Mammal Commission.

Changes From the Proposed IHA to the Final IHA

No public comments were received during the comment period; however, NMFS made a few minor clarifications and corrections to this final notice and the corresponding IHA. In the sections of the documents that refer to the use of a bubble curtain, it was established that the bubble curtain would be used in cases where the Level A harassment zone extends to the full region of influence (ROI). To clarify this further, NMFS add that this refers to DTH (cluster and mono-hammer), rock hammering, and impact pile driving of sheet piles. Specifically, these include the 78-in cluster and 42-in mono DTH, rock hammering, and impact pile driving of sheet piles for the secant pile guide wall. In addition, for bubble curtains, NMFS clarified that the air flow to the bubblers would be balanced across the entrance openings to the superflood basin, rather than the piles. Finally, NMFS removed the mitigation condition that outlined observers shall work in shifts lasting no longer than 4 hours (hrs) with at least a 1-hr break between shifts and will not perform duties as an observer for more than 12 hrs in a 24-hr period. This is not a required condition for the Navy for these construction activities, rather it is related to seismic surveys but was accidentally included. That said, NMFS communicated to the Navy that observers should be given adequate

breaks and work in shifts to reduce observer fatigue to ensure their ability to best monitor for marine mammals.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>).

Table 1 lists all species with expected potential for occurrence in the Piscataqua River in Kittery, Maine, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, NMFS follows Committee on Taxonomy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic Marine Mammal SARs. All values presented in Table 3 are the most recent available at the time of publication and are available in the final 2020 SARs (Hayes *et al.*, 2021) and draft 2021 SARs, available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports>.

TABLE 1—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROPOSED PROJECT AREA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales)						
Family Phocoenidae (porpoises): Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy	-; N	95,543 (0.31; 74,034; 2016)	851	164
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals): Harbor seal	<i>Phoca vitulina</i>	Western North Atlantic	-; N	61,336 (0.08, 57,637; 2018)	1,729	339
Gray seal	<i>Halichoerus grypus</i>	Western North Atlantic	-; N	27,300 ⁴ (0.22; 22,785; 2016)	1,389	4,453
Harp seal	<i>Pagophilus groenlandicus</i> ...	Western North Atlantic	-; N	7,600,000(unk,7,100.000, 2019) ...	426,000 ..	178,573
Hooded seal	<i>Cystophora cristata</i>	Western North Atlantic	-; N	593,500	Unknown	1,680

¹ Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region#reports>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

³ These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

⁴ This abundance value and the associated PBR value reflect the US population only. Estimated abundance for the entire Western North Atlantic stock, including animals in Canada, is 451,600. The annual M/SI estimate is for the entire stock.

All species that could potentially occur in the proposed action area are included in Table 1. More detailed descriptions of marine mammals in the PNSY project area are provided below.

A detailed description of the species likely to be affected by the Navy's project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (87 FR 11860; March 2, 2022); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (<https://www.fisheries.noaa.gov/find-species>) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the Navy's construction activities have the potential to result in Level A and Level B harassment by behavioral disturbance, temporary threshold shift to marine mammals in the vicinity of the project area. The notice of proposed IHA (87 FR 11860; March 2, 2022) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from the Navy's

construction activities on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (87 FR 11860; March 2, 2022).

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of small numbers and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, in the form of behavioral disturbance, masking, and potential TTS, with a smaller amount of Level A harassment in the form of PTS. As described previously, no mortality is anticipated or proposed to be authorized

for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (e.g., previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other

factors related to the source (e.g., frequency, predictability, duty cycle), the environment (e.g., bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.*, 2007, Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when

exposed to underwater anthropogenic noise above received levels of 120 dB re 1 microPascal (µPa) (root mean square (RMS) for continuous (e.g., vibratory pile-driving, drilling) and above 160 dB re 1 µPa (RMS) for impulsive and/or intermittent (e.g., impact pile driving, DTH) sources. The Navy’s construction includes the use of continuous and impulsive sources, and therefore the 120 and 160 dB re 1 µPa (RMS) thresholds are applicable.

Level A harassment—NMFS’ Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury

(Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise. The Navy’s modification and expansion of Dry Dock 1 includes the use of impulsive (i.e., impact pile driving, DTH) and non-impulsive (i.e., drilling, vibratory pile driving) sources.

These thresholds re provided in Table 2 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at <https://www.fisheries.noaa.gov/national/marine-mammal-protection>.

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT FOR HIGH FREQUENCY CETACEANS AND PINNIPEDS

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
High-Frequency (HF) Cetaceans	<i>Cell 5:</i> $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	<i>Cell 6:</i> $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	<i>Cell 7:</i> $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	<i>Cell 8:</i> $L_{E,PW,24h}$: 201 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (HF cetaceans and PW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels transmission loss coefficient.

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10}(R_1/R_2),$$

Where:

B = transmission loss coefficient (assumed to be 15)

R₁ = the distance of the modeled sound pressure level (SPL) from the driven pile, and

R₂ = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to

which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions, including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log(range)). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log(range)). As is common practice in coastal waters, here we assume practical spreading (4.5 dB reduction in sound level for each doubling of distance). Practical spreading is a compromise that is often used under conditions where water depth increases as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and

cylindrical spreading loss conditions. Practical spreading was used to determine sound propagation for this project.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. There are sound source level (SSL) measurements available for certain pile types and sizes from the similar environments from other Navy pile driving projects that were evaluated and used as proxy sound source levels to determine reasonable sound source levels likely to result from the pile driving and removal activities (Table 3). Some of the proxy source levels are expected to be more conservative, as the values are from larger pile sizes. Acoustic monitoring results and associated monitoring reports from past projects conducted at the shipyard and elsewhere were reviewed. Projects reviewed were those most similar to the specified activity in terms of drilling and rock hammering activities, type and size of piles installed, method of pile installation, and substrate conditions.

TABLE 3—SUMMARY OF IN-WATER PILE DRIVING SOURCE LEVELS
[At 10 m from source]

Pile type	Installation method	Pile diameter	Peak (dB re 1 μPa)	RMS (dB re 1 μPa)	SEL (dB re 1 μPa ² sec)
Casing/Socket	Rotary Drill	102-inch ¹	NA	154 m	NA
Shaft	DTH Cluster Drill	78-inch ²	NA	195.2 (Level A) 167 dB (Level B).	181
Casing	DTH mono-hammer	42-inch ¹	194	167	164
Rock anchor	DTH mono-hammer	9-inch ¹	172	167	146
Relief hole	DTH mono-hammer	4 to 6-inch ¹	170	167	144
Z-shaped Sheet	Impact	28-inch ³	211	196	181
	Vibratory	28-inch ⁴	NA	167	167
Flat sheet	Vibratory	18-inch ⁵	NA	163	163
Bedrock and concrete demolition.	Rock Hammer ^{6,7}	NA	197	184	175

¹ Egger 2021a.

² Egger 2021b.

³ A proxy value for impact pile driving 28-inch steel sheet piles could not be found so the proxy for a 30-inch steel pipe pile has been used (NAVFAC SW 2020 [p. A–4]).

⁴ A proxy value for vibratory pile driving 28-inch steel sheet piles could not be found so a proxy for a 30-inch steel pipe pile has been used (Navy 2015 [p. 14]).

⁵ NMFS 2019 (p. 24484, Table 5).

⁶ Reyff 2018a

⁷ Reyff 2018b

Notes: All SPLs are unattenuated; dB=decibels; NA = Not applicable; single strike SEL are the proxy sources levels presented for impact pile driving and were used to calculate distances to PTS.

dB re 1 μPa = dB referenced to a pressure of 1 microPascal, measures underwater SPL. dB re 1 μPa²-sec = dB referenced to a pressure of 1 microPascal squared per second, measures underwater SEL.

All recordings were made at 10 meters unless noted otherwise.

With regards to the proxy values summarized in Table 3, very little information is available regarding source levels for in-water rotary drilling activities. As a conservative measure and to be consistent with previously issued IHAs for similar projects in the region (Egger 2021a; Dazey 2012), a proxy of 154 dB RMS is proposed for all rotary drilling activities.

Rock hammering is analyzed as an impulsive noise source. For purposes of this analysis, it is assumed that the hammer would have a maximum strike rate of 460 strikes per minute and would operate for a maximum duration of 15 minutes before needing to reposition or stop to check progress. Therefore, noise impacts for rock hammering activities are assessed using the number of blows per 15-minute interval (6,900 blows) and the number of 15-minute intervals anticipated over the course of the day based on the durations provided in Table 2–1 and Table 6–5 of the application. As with rotary drilling, very little information is available regarding source levels associated with nearshore rock hammering. Measurements taken for this activity as part of the Tappan Zee Bridge replacement project recorded sound levels as follows:

- 197 dBpk, 184 dB RMS, 175 dB SEL (Reyff 2108a, 2018b)

Since no other comparable proxy values were identified in the literature, the Navy is proposing to use the same proxy values for rock hammering activities associated with P–381.

The Navy consulted with NMFS to obtain the appropriate proxy values for DTH mono-hammers. With regards to DTH mono-hammers, NMFS provided proxy values of 170 dBpk, 167 RMS, and 144 dB single strike SEL for holes 8-inches in diameter or less (Reyff 2020); 172 dBpk, 167 RMS, and 146 dB single strike SEL for holes 8- to 18 inches in diameter (Guan and Miner 2020); and 194 dBpk, 167 RMS, and 164 dB single strike SEL for holes 24- to 42-inches in diameter (Reyff 2020, Denes *et al.*, 2019 as cited in NMFS 2021a). For the 78-inch DTH cluster drill, NMFS provided an RMS value of 195.2 based off of regression and extrapolation calculations of existing data. Because of the high number of hammers and strikes for this system, cluster drills were treated as a continuous sound source for the time component of Level A harassment but still used the impulsive thresholds. The Level B harassment sound source level at 10 m remained at 167 dB RMS (Heyvaert and Reyff, 2021 as cited in NMFS 2021b).

In conjunction with the NMFS Technical Guidance (2018), in recognition of the fact that ensounded area/volume could be more technically challenging to predict because of the duration component in the new thresholds, NMFS developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that, because of

some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimation of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate. For stationary sources (such as from impact and vibratory pile driving), the NMFS User Spreadsheet (2020) predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet can be found in Appendix A of the Navy’s application and the resulting isopleths are reported below (Tables 4 and 5).

Calculated distances to Level A harassment (PTS Onset) and Level B harassment thresholds are large, especially for DTH and rock hammering activities. However, the full distance of sound propagation would not be reached due to the presence of land masses and anthropogenic structures that would prevent the noise from reaching nearly the full extent of the larger harassment isopleths. The region of influence (ROI), which illustrates that the land masses preclude the sound from traveling more than approximately

870 m (3,000 ft) from the source, at most.

Maximum distances are provided for the behavioral thresholds for in-water construction activities. Areas encompassed within the threshold (harassment zones) were calculated by using a Geographical Information System to clip the maximum calculated distances to the extent of the ROI.

Table 4 summarizes the calculated maximum distances corresponding to

the underwater marine mammal harassment zones from impulsive (impact pile driving, rock hammering, DTH) and Table 5 for non-impulsive noise (vibratory pile driving, rotary drilling, etc.) and the area of the harassment zone within the ROI. The distances do not take the land masses into consideration, but the ensonified areas do. Neither consider the reduction that will be achieved by the required use of a bubble curtain for certain

activities and therefore all take estimates are considered conservative. Refer to Figures 6–9 through 6–11 of the application for the calculated maximum distances corresponding to the underwater marine mammal harassment zones from impulsive (impact pile driving, rock hammering, DTH) and non-impulsive noise (vibratory pile driving, rotary drilling) and the corresponding area of the harassment zone within the ROI.

TABLE 5—CALCULATED DISTANCE AND AREAS OF LEVEL A AND LEVEL B HARASSMENT FOR IMPULSIVE NOISE [DTH, impact pile driving, hydraulic rock hammering]

Activity	Purpose	Count and size/duration	Total production days	Level A harassment (PTS onset) *		Level B harassment *
				High frequency cetaceans (harbor porpoise)	Phocid Pinnipeds	Harbor porpoise and phocids
DTH Cluster Drill	Foundation Support Piles for Center Wall.	38, 78-inch shafts	247	84,380.4 m/0.417 km ² .	37,909.7 m/0.417 km ² .	13,594 m/0.417 km ² .
DTH Cluster Drill	Foundation Leveling Piles for Center Wall.	18, 78-inch shafts	117	84,380.4 m/0.417 km ² .	37,909.7 m/0.417 km ² .	13,594 m/0.417 km ² .
DTH Cluster Drill	Center Wall—Access Support Platform.	38, 78-inch shafts	133	84,380.4 m/0.417 km ² .	37,909.7 m/0.417 km ² .	13,594 m/0.417 km ² .
DTH Mono-hammer	Center Wall—Temporary Launching Piles.	6, 42-inch shafts	6	3,880.3 m/0.417 km ² .	1,743.3 m/0.417 km ² .	13,594 m/0.417 km ² .
DTH Mono-hammer	Center Wall Tie-Downs	36, 9-inch holes	18	244.8 m/0.074 km ² .	110 m/0.0229 km ² .	13,594 m/0.417 km ² .
DTH Mono-hammer	Center Wall-Access Platform Tie-Downs.	18, 9-inch holes	9	244.8 m/0.0741 km ² .	110 m/0.0229 km ² .	13,594 m/0.417 km ² .
Impact Pile Driving	West Closure Wall Tie-In to Existing Wall.	16**, 28-inch Z-shaped sheets	** 4	988.2 m/0.4034 km ² .	444.0 m/0.2012 km ² .	2,512 m/0.417 km ² .
Impact Pile Driving	Berth 11 End Wall Secant Pile Guide Wall.	60, 28-inch Z-shaped sheets	7	1,568.6 m/0.417 km ² .	704.7 m/0.365 km ² .	2,512 m/0.417 km ² .
DTH Mono-hammer	Relief Holes Under West Closure Cell.	500, 4–6 inch holes	20	180.1 m/0.0481 km ² .	80.9 m/0.015 km ² .	13,594 m/0.417 km ² .
DTH Mono-hammer	Mechanical Rock Removal Along Face of Existing Abutment.	46, 42-inch casing advancements.	24	3,880.3 m/0.417 km ² .	1,743.3 m/0.417 km ² .	13,594 m/0.417 km ² .
DTH Mono-hammer	Install Piles for Dry Dock 1 North Entrance Abutment.	28, 42-inch shafts	28	3,880.3 m/0.417 km ² .	1,743.3 m/0.417 km ² .	13,594 m/0.417 km ² .
DTH Mono-hammer	Relief Holes Under West Closure Cell.	2,201**, 4–6 inch holes	** 82	180.1 m/0.0481 km ² .	80.9 m/0.015 km ² .	13,594 m/0.417 km ² .
DTH Mono-hammer	Mechanical Rock Removal Along Face of Existing Abutment.	365, 42-inch casing advancements.	183	3,880.3 m/0.417 km ² .	1,743.3 m/0.417 km ² .	13,594 m/0.417 km ² .
DTH Mono-hammer	Dry Dock 1 Entrance Tremie Tie Downs.	100, 9-inch holes	52	132.9 m/0.0303 km ² .	59.7 m/0.009 km ² .	13,594 m/0.417 km ² .
Impact Pile Driving	Install Sheet Piles for Dry Dock 1 North Entrance and Temporary Cofferdam.	96, 28-inch Z-shaped sheets	12	1,568.6 m/0.417 km ² .	704.7 m/0.365 km ² .	2,512 m/0.417 km ² .
Hydraulic Rock Hammer	Removal of Sheetpile and Granite Quay Wall (610 cy).	2.5 hours	** 10	5,860.0 m/0.417 km ² .	2,633 m/0.4174 km ² .	398 m/0.165 km ² .
Hydraulic Rock Hammer	Mechanical Rock Removal (985 cy) Under West Closure Cell.	9 hours	77	13,766 m/0.417 km ² .	6,184.7 m/0.417 km ² .	398 m/0.165 km ² .
Hydraulic Rock Hammer	Shutter Panel Demolition	5 hours	** 56	9,303.1 m/0.417 km ² .	4,179.6 m/0.417 km ² .	398 m/0.165 km ² .
Hydraulic Rock Hammer	Mechanical Rock Removal (3,500 cy) Along Face of Existing Berth 11 at Basin Floor.	12 hours	** 100	16,676.3 m/0.417 km ² .	7,492.2 m/0.417 km ² .	398 m/0.165 km ² .
Hydraulic Rock Hammer	P-310 Sheet Pile Removal—Berth 1.	12, 25-inch Z-shaped sheets, 6 hours.	** 3	10,505.4 m/0.417 km ² .	4,719.8 m/0.417 km ² .	398 m/0.1652 km ² .
Hydraulic Rock Hammer	Berth 1 Top of Wall Demolition for Water Install.	10 hours	** 6	14,767.7 m/0.417 km ² .	6,634.7 m/0.417 km ² .	398 m/0.165 km ² .

Source: Kiewit 2021.

Notes:

* To determine underwater harassment zones, ensonified areas from the source were clipped along the shoreline using Geographical Information Systems (GIS)

** These activities will continue into the following construction years and the remaining construction days and activities will be included in a subsequent LOA. The construction days and activities represented in this table account ONLY for year 1 activities

lf = linear feet; N/A = Not Applicable

Proxy sources used were unattenuated SPLs.

TABLE 5—CALCULATED DISTANCE AND AREAS OF LEVEL A AND LEVEL B HARASSMENT FOR NON-IMPULSIVE NOISE [vibratory pile driving, rotary drilling]

Activity	Purpose	Count and size	Total production days	Level A Harassment (PTS Onset)		Level B Harassment
				High frequency cetaceans harbor porpoise	Phocid Pinnipeds	Harbor porpoise and phocids
Rotary Drill	Center Wall Foundation Pile—Install Outer Casing.	38, 102-inch Borings	38	2.1 m/0.000014 km ² .	1.3 m/0.000005 km ² .	1,848 m/0.417 km ²
Rotary Drill	Center Wall Foundation Pile—Pre-Drill Socket.	38, 102-inch Borings	38	8.9 m/0.000248 km ² .	5.4 m/0.000091 km ² .	1,848 m/0.417 km ²
Rotary Drill	Center Wall Foundation Pile—Remove Outer Casing.	38, 102-inch Borings	38	0.8 m/0.000002 km ² .	0.5 m/0.000001 km ² .	1,848 m/0.417 km ²
Rotary Drill	Center Wall Leveling Piles—Install Outer Casing.	18, 102-inch Borings	18	2.1 m/0.000014 km ² ..	1.3 m/0.000005 km ² .	1,848 m/0.417 km ²
Rotary Drill	Center Wall Leveling Piles—Pre-Drill Socket.	18, 102-inch Borings	18	8.9 m/0.000248 km ² ..	5.4 m/0.000091 km ² .	1,848 m/0.417 km ²
Rotary Drill	Center Wall Leveling Piles—Remove Outer Casing.	18, 102-inch Borings	18	0.8 m/0.000002 km ² ..	0.5 m/0.000001 km ² .	1,848 m/0.417 km ²
Rotary Drill	Center Wall Access Platform Support—Install Outer Casing.	38, 102-inch Borings	38	2.1 m/0.000014 km ² ..	1.3 m/0.000005 km ² .	1,848 m/0.417 km ²
Rotary Drill	Center Wall Access Platform Support—Pre-Drill Socket.	38, 102-inch Borings	38	8.9 m/0.000248 km ² ..	5.4 m/0.000091 km ² .	1,848 m/0.417 km ²
Rotary Drill	Center Wall Access Platform Support—Remove Outer Casing.	38, 102-inch Borings	38	0.8 m/0.000002 km ² ..	0.5 m/0.000001 km ² .	1,848 m/0.417 km ²
Vibratory Pile Driving	Tie-In to Existing West Closure Wall.	16**, 28-inch Z-Shaped Sheets.	** 4	12.2 m/0.000454 km ² ..	5.0 m/0.000078 km ² .	13,594 m/0.417 km ²
Vibratory Pile Driving	Berth 11 End Wall Secant Pile Guide Wall.	60, 28-inch Z-Shaped Sheets	7	19.4 m/0.001041 km ² ..	8.0 m/0.0002 km ² .	13,594 m/0.417 km ²
Vibratory Extraction	Remove P-310 West Closure Wall.	238, 18-inch Flat Sheets	60	6.6 m/0.000136 km ² ..	2.7 m/0.000023 km ² .	7,356 m/0.417 km ²
Vibratory Pile Driving	Install Sheet Piles for Dry Dock 1 North Entrance and Temporary Cofferdam.	96, 28-inch Z-Shaped Sheets	12	19.4 m/0.001041 km ² ..	8.0 m/0.0002 km ² ..	13,594 m/0.417 km ²

** These activities will continue into the following construction years and the remaining construction days and activities will be included in a subsequent LOA. The construction days and activities represented in this table account ONLY for year 1 activities.
 If = linear feet; N/A = Not Applicable.
 Proxy sources used were unattenuated SPLs.

Concurrent Activities

Simultaneous use of pile drivers, hammers, and drills could result in increased SPLs and harassment zone sizes given the proximity of the component sites and the rules of decibel addition (see Table 6 below). Due to the relatively small size of the ROI, the use of a single DTH cluster drill or rock hammer would ensonify the entire ROI to the Level A harassment thresholds (PTS Onset) (refer to Table 4). Therefore, when this equipment is operated in conjunction with other noise generating equipment, there would be no change in

the size of the harassment zone. The entire ROI would remain ensonified to the Level A harassment thresholds for the duration of the activity and there would be no Level B harassment zone. However, when DTH cluster drills or rock hammers are not in use, increased SPLs and harassment zone sizes within the ROI could result. Due to the large amount of bedrock excavation required for the construction of the multifunctional expansion of Dry Dock 1, the only scenario identified in which DTH cluster drills and/or rock hammers would not be in operation would be at

the beginning of the project when two rotary drills could be used simultaneously.

According to recent, project specific, guidance provided by NMFS to the Navy, when two noise sources have overlapping sound fields, there is potential for higher sound levels than for non-overlapping sources because the isopleth of one sound source encompasses the sound source of another isopleth. In such instances, the sources are considered additive and combined using the rules of decibel addition, presented in Table 6 below.

TABLE 6—ADJUSTMENTS FOR SOUND EXPOSURE LEVEL CRITERION

Source types	Difference in sound level (at specified meters)	Adjustments to specifications for Level A harassment RMS/SEL _{ss} * calculations
Non-impulsive, continuous/Non-impulsive, continuous OR Impulsive source (multiple strikes per second)/Impulsive source (multiple strikes per second).	0 or 1 dB	Add 3 dB to the highest sound level (at specified meters) AND adjust number of piles per day to account for overlap (space and time).

TABLE 6—ADJUSTMENTS FOR SOUND EXPOSURE LEVEL CRITERION—Continued

Source types	Difference in sound level (at specified meters)	Adjustments to specifications for Level A harassment RMS/SEL _{ss} * calculations
	2 or 3 dB	Add 2 dB to the highest sound level (at specified meters) AND adjust number of piles per day to account for overlap (space and time).
	4 to 9 dB	Add 1 dB to the highest sound level (at specified meters) AND adjust number of piles per day to account for overlap (space and time).
	10 dB or more ..	Add 0 dB to the highest sound level (at specified meters) AND adjust number of piles per day to account for overlap (space and time).

* RMS level for vibratory pile driving/rotary hammer and single strike SEL (SEL_{ss}) level for DTH/rock hammer.

For simultaneous usage of three or more continuous sound sources, the three overlapping sources with the highest sound source levels are identified. Of the three highest sound source levels, the lower two are combined using the above rules, then the combination of the lower two is combined with the highest of the three. For example, with overlapping isopleths from 24-, 36-, and 42-inch diameter steel pipe piles with sound source levels of 161, 167, and 168 dB RMS respectively, the 24- and 36-inch would be added together; given that 167 – 161 = 6 dB,

then 1 dB is added to the highest of the two sound source levels (167 dB), for a combined noise level of 168 dB. Next, the newly calculated 168 dB is added to the 42-inch steel pile with sound source levels of 168 dB. Since 168 – 168 = 0 dB, 3 dB is added to the highest value, or 171 dB in total for the combination of 24-, 36-, and 42-inch steel pipe piles (NMFS, 2021 unpublished). By using this method, a revised proxy source for Level A and Level B analysis was determined for the use of two, 102-inch diameter rotary drills. The revised proxy value is presented in Table 7 and the

resulting harassment zones are summarized in Table 8 (depicted in Figure 6–13 in the Navy’s application).

TABLE 7—REVISED PROXY VALUES FOR SIMULTANEOUS USE OF NON-IMPULSIVE SOURCES

Equipment	Rotary drill	
	RMS	
Rotary Drill	154	157

TABLE 8—LEVEL A AND LEVEL B HARASSMENT ZONES RESULTING FROM THE SIMULTANEOUS USE OF TWO, 102-IN. DIAMETER ROTARY DRILL

Multiple source scenario	Level A harassment (PTS onset)		Level B harassment
	Harbor porpoise distance to 155 dB SEL _{cum} threshold/area of harassment zone	Phocids distance to 185 dB SEL _{cum} threshold/area of harassment zone	Harbor porpoise and phocids distance to 120 dB (DTH) threshold/area of harassment zone
2 Rotary Drills	23.6 m/0.002 km ²	9.7 m/0.0002 km ²	2,929 m/0.417 km ²

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Potential exposures to impact pile and vibratory pile driving, rotary drilling, DTH, and rock hammering noise for each acoustic threshold were estimated using marine mammal density estimates (N) from the Navy Marine Species Density Database (NMSDD) (Navy 2017) or from monitoring reports from the Berth 11 Waterfront Improvements and P–310 construction projects. Specifically, where monitoring data specific to the project area were available, they were used, and the NMSDD data were used when there were no monitoring data available. The take estimate was determined using the

following equation take estimate = N * days of activity * area of harassment. The pile type, size, and installation method that produce the largest zone of influence (ZOI) were used to estimate exposure of marine mammals to noise impacts. We describe how the information provided above is brought together to produce a quantitative take estimate in the species sections below.

Harbor Porpoise

Harbor porpoises may be present in the proposed project area during spring, summer, and fall, from April to December. Based on density data from the Navy Marine Species Density Database, their presence is highest in spring, decreases in summer, and slightly increases in fall. During previous monitoring of construction projects in the area, three harbor

porpoise were sighted between April and December of 2017; two harbor porpoise were sighted in early August of 2018; and one harbor porpoise was sighted in 2020 (Cianbro 2018a, b; Navy 2019; NAVFAC 2021). Using the 2017 and 2018 data from construction monitoring for the Berth 11 Waterfront Improvements project, the density of harbor porpoise for the largest harassment zone was determined to be 0.04/km².

Estimated take was calculated by density * harassment zone * days for each activity (see Table 9). Note that where the Level A harassment zone is as large as the Level B harassment zone and fills the entire ensounded area, the enumerated takes in the Level A harassment column may be in the form of Level A harassment and/or Level B harassment.

TABLE 9—CALCULATED PROPOSED TAKE BY LEVEL A AND LEVEL B HARASSMENT OF HARBOR PORPOISE BY PROJECT ACTIVITY

Project activity	Density	Level A harassment zone (km ²)	Number of days	Take by Level A harassment	Level B harassment zone (km ²)	Take by Level B harassment
Center Wall—Install Foundation: 38 drilled shafts: Cluster drill DTH (Drill) 78-inch diameter casing	0.04	0.417	247	4	0.417	0
Center Wall—Install Diving Board Shafts: 18 drilled shafts: Cluster drill DTH (Drill) 78-inch diameter socket	0.04	0.417	117	2	0.417	0
Center Wall—Access Platform Support: 38 drilled shafts: Cluster Drill DTH (Drill) 78-inch outer casing	0.04	0.417	133	2	0.417	0
Mechanical Rock Excavation, Hydraulic rock hammering (985 cy)	0.04	0.417	77	1	0.165	0
Remove Shutter Panels: 112 panels, Demolish shutter panels, Hydraulic rock hammering	0.04	0.417	56	1	0.165	0
Mechanical Rock Removal at Basin Floor: Excavate Bedrock, Hydraulic rock hammering	0.04	0.417	100	2	0.165	0
Mechanical Rock at Abutment: Drill 365 rock borings (1,220 cy), 42-inch diameter casing, Mono-hammer DTH	0.04	0.417	183	3	0.417	0
Center Wall—Install Foundation: 38 drilled shafts: Rotary Drill (Install) 102-inch diameter outer casing	0.04	0.00001	38	0	0.417	1
Center Wall—Install Foundation: 38 drilled shafts: Rotary Drill (Pre-drill) 102-inch diameter socket,	0.04	0.00001	38	0	0.417	1
Center Wall—Install Foundation: 38 drilled shafts: Rotary Drill (Remove) 102-inch outer casing	0.04	0.00001	38	0	0.417	1
Center Wall—Access Platform Support: 38 drilled shafts: Rotary Drill (Install) 102-inch diameter outer casing	0.04	0.00001	38	0	0.417	1
Center Wall—Access Platform Support: 38 drilled shafts: Rotary Drill (Pre-drill) 102-inch diameter socket	0.04	0.00001	38	0	0.417	1
Center Wall—Access Platform Support: 38 drilled shafts: Rotary Drill (Remove) 102-inch outer casing,	0.04	0.0000002	38	0	0.417	1
Remove Wall: 238 sheet piles, 18-inch wide flatwebbed, Vibratory Extraction	0.04	0.000136	60	0	0.417	1
Mechanical Rock Removal at Basin Floor: Drill 2,201 relief holes, 4–6 holes, Mono-hammer DTH,	0.04	0.048109	82	0	0.417	1
Drill Tremie Ties Downs: Drill 100 rock anchors, 9-inch holes, Mono-hammer DTH	0.04	0.0303	52	0	0.417	1
Total Estimated Take				15		9

In summary, we estimate that up to 15 takes in the form of Level A harassment and/or Level B harassment could occur during DTH excavation (DTH mono-hammer and cluster drill), impact pile driving, and rock hammering activities. In addition, DTH mono-hammer excavation could result in 2 takes by Level B harassment and vibratory installing/extracting and rotary drilling activities could result in 7 takes by Level B harassment (Table 9).

Harbor Seal

Harbor seals may be present year-round in the project vicinity, with constant densities throughout the year. Harbor seals are the most common pinniped in the Piscataqua River near the Shipyard. Harbor seal sightings were recorded during monthly surveys conducted in 2017 and 2018 (NAVFAC Mid-Atlantic 2018, 2019b) as well as during Berth 11 and P-310 construction

monitoring in 2017, 2018, 2020 and 2021 (Cianbro 2018a, b; Navy 2019; Stantec 2020, Stantec 2021). Estimated take by Level B harassment has been calculated by multiplying the average number of harbor seals sighted per day from May 2020 through October 2021 by the number of actual in-water construction days (375 days (159 during P-310 year 1 and 216 during P-310 year 2)). Over the course of this time period, there have been 1,023 harbor seal observations equating to equating to 3 harbor seal sightings per day. Initially, takes were calculated for Level A and Level B harassment for harbor seals where the density of animals (2.48 harbor seals/km², rounded to 3) was multiplied by the harassment zone and the number of days per construction activity. However, using that method produced take numbers for Level B harassment that were lower than the number of harbor seals that has been

previously observed in the Navy’s monitoring reports. Therefore, NMFS is proposing (and the Navy agrees), to increase the take by Level B harassment to more accurately reflect harbor seal observations in the monitoring reports, by using the value of three harbor seals a day multiplied by the total number of construction days resulting in 1,125 takes by Level B harassment proposed for authorization. Take by Level A harassment of 1,269 harbor seals is shown in Table 10 below. Note that where the Level A harassment zone is as large as the Level B harassment zone and fills the entire ensonified area, the enumerated takes in the Level A harassment column may be in the form of Level A harassment and/or Level B harassment. The authorized takes by Level B harassment were not included in Table 10 as they were calculated by a different method discussed above.

TABLE 10—CALCULATED PROPOSED TAKE BY LEVEL A HARASSMENT OF HARBOR SEAL BY PROJECT ACTIVITY

Project activity	Harbor seals density	Level A harassment zone (km ²)	Number of days	Take by Level A harassment
Center Wall—Install Foundation: 38 drilled shafts: Cluster drill DTH (Drill) 78-inch diameter casing	3	0.417	247	309
Center Wall—Install Diving Board Shafts: 18 drilled shafts: Cluster drill DTH (Drill) 78-inch diameter socket	3	0.417	117	146
Center Wall—Access Platform Support: 38 drilled shafts: Cluster Drill DTH (Drill) 78-inch outer casing	3	0.417	133	166
Center Wall—Temp Launching Piles: 6 drilled shafts: 42-inch diameter shaft, Mono-hammer DTH	3	0.417	6	8
Center Wall Tie Downs: 36 Rock Anchors (Install): 9-inch diameter holes, Mono-hammer DTH	3	0.023	18	1
Center Wall—Access Platform Tie Downs: 18 Rock Anchors (Install): 9-inch diameter holes, Mono-hammer DTH	3	0.023	9	1
Center Wall—Install Tie-In to Existing West Closure Wall: 16 sheet piles: 28-inch wide Z-shaped sheets—IMPACT Install	3	0.201	4	2
Berth 11 End Wall—Install Secant Pile Guide Wall: 60 sheets piles: 28-inch wide Z-shaped sheets—IMPACT Install	3	0.417	7	8
Berth 1—Remove Granite Block Quay Wall: 610 cy, Granite block demo, Hydraulic Rock hammering	3	0.417	10	13
P310 West Closure Wall—Mechanical Rock Excavation: 985 cy, Excavated bedrock, Hydraulic rock hammering	3	0.417	77	96
P310 West Closure Wall—Mechanical Rock Excavation: Drill 500 relief holes, 4–6 inch holes, Mono-hammer DTH	3	0.015	20	1
P310 West Closure Wall—Mechanical Rock Excavation: Drill 46 rock borings (50 cy), 42-inch diameter casing, Mono-hammer DTH	3	0.417	24	30
West Closure well—Berth 11 Abutment—Install Piles: Drill 28 shafts, 42-inch diameter casing, Mono-hammer DTH	3	0.417	28	35
Berth 11—Remove Shutter Panels: 112 panels, Demolish shutter panels, Hydraulic rock hammering	3	0.417	56	70
Berth 11 Face—Mechanical Rock Removal at Basin Floor: 3,500 cy, Excavate Bedrock, Hydraulic rock hammering	3	0.417	100	125
Berth 11 Face—Mechanical Rock Removal at Basin Floor: Drill 2,201 relief holes, 4–6 holes, Mono-hammer DTH	3	0.015	82	4
Berth 11 Face—Mechanical Rock at Abutment: Drill 365 rock borings (1,220 cy), 42-inch diameter casing, Mono-hammer DTH	3	0.417	183	229
Dry Dock 1 North Entrances—Install Temporary Cofferdam: Install 96 sheet piles, 28-inch wide Z-shaped sheets, IMPACT Install	3	0.365	12	13
Berth 1—Remove sheet piles: Remove 12 sheet piles, 25-inch wide Z-shaped sheets, Hydraulic rock hammering	3	0.417	3	4
Berth 1 Top of Wall—Demolition for Waler Installation: 30 lf, Mechanical concrete demolition, Hydraulic rock hammering	3	0.417	6	8
Total Estimated Take .....	.....	.....	.....	1,269

Gray Seal

Gray seals may be present year-round in the project vicinity, with constant densities throughout the year. Gray seals are less common in the Piscataqua River than the harbor seal. Sightings of gray seals were recorded during P–310 construction monitoring in 2020 and 2021 (Stantec 2020; Stantec 2021). Estimated take by Level B harassment has been calculated by multiplying the average number of gray seal observations per day from May 2020 through October 2021 (47 during year 1 P–310 monitoring and 9 during year 2 P–310 monitoring (to date)) over the course of 337 monitoring days (Stantec

2020; 2021). Over the course of this time period, there have been 56 gray seal observations equating to equating to 0.2 gray seal sightings per day. Initially, takes were calculated for Level A and Level B harassment for gray seals where the density was multiplied by the harassment zone and the number of days per construction activity. However, using that method produced take numbers for Level B harassment that were fewer than the number of gray seals that has been previously observed in the Navy’s monitoring reports. Therefore, NMFS (and the Navy agreed) increased the take by Level B harassment to more accurately reflect

gray seal observations in the monitoring reports, by using the value of 0.2 gray seals multiplied by the total number of construction days resulting in 75 takes by Level B harassment. Take by Level A harassment of 85 gray seals is shown in Table 11 below. Note that where the Level A harassment zone is as large as the Level B harassment zone and fills the entire ensonified area, the enumerated takes in the Level A harassment column may be in the form of Level A harassment and/or Level B harassment. The authorized takes by Level B harassment were not included in Table 11 as they were calculated by a different method as discussed above.

TABLE 11—CALCULATED PROPOSED TAKE BY LEVEL A HARASSMENT OF GRAY SEAL BY PROJECT ACTIVITY

Project activity	Gray seal density	Level A harassment zone (km ²)	Number of days	Take by Level A harassment
Center Wall—Install Foundation: 38 drilled shafts: Cluster drill DTH (Drill) 78-inch diameter casing	0.2	0.417	247	21
Center Wall—Install Diving Board Shafts: 18 drilled shafts: Cluster drill DTH (Drill) 78-inch diameter socket	0.2	0.417	117	10
Center Wall—Access Platform Support: 38 drilled shafts: Cluster Drill DTH (Drill) 78-inch outer casing	0.2	0.417	133	11
Center Wall—Temp Launching Piles: 6 drilled shafts: 42-inch diameter shaft, Mono-hammer DTH	0.2	0.417	6	1
Berth 11 End Wall—Install Secant Pile Guide Wall: 60 sheets piles: 28-inch wide Z-shaped sheets—IMPACT Install	0.2	0.417	7	1
Berth 1—Remove Granite Block Quay Wall: 610 cy, Granite block demo, Hydraulic Rock hammering	0.2	0.417	10	1
P310 West Closure Wall—Mechanical Rock Excavation: 985 cy, Excavated bedrock, Hydraulic rock hammering	0.2	0.417	77	6
P310 West Closure Wall—Mechanical Rock Excavation: Drill 19 rock borings (50 cy), 42-inch diameter casing, Mono-hammer DTH	0.2	0.417	24	2
West Closure well—Berth 11 Abutment- Install Piles: Drill 28 shafts, 42-inch diameter casing, Mono-hammer DTH	0.2	0.417	28	2
Berth 11—Remove Shutter Panels: 112 panels, Demolish shutter panels, Hydraulic rock hammering	0.2	0.417	56	5
Berth 11 Face—Mechanical Rock Removal at Basin Floor: 1,020 cy, Excavate Bedrock, Hydraulic rock hammering	0.2	0.417	3	8
Berth 11 Face—Mechanical Rock at Abutment: Drill 192 rock borings (610 cy), 42-inch diameter casing, Mono-hammer DTH	0.2	0.417	24	15
Dry Dock 1 North Entrances—Install Temporary Cofferdam: Install 96 sheet piles, 28-inch wide Z-shaped sheets, IMPACT Install	0.2	0.365	12	1
Berth 1 Top of Wall—Demolition for Waler Installation: 30 lf, Mechanical concrete demolition, Hydraulic rock hammering	0.2	0.417	6	1
Total Estimated Take				85

Hooded Seal

Hooded seals may be present in the project vicinity from January through May, though their exact seasonal densities are unknown. In general, hooded seals are much rarer than the harbor seal and gray seal in the Piscataqua River. One take per month from January to May from Level B harassment of a hooded seal for the Berth 11 Waterfront Improvements Construction project (NMFS 2018b) and for Year 1 construction activities for Dry Dock 1 (NMFS, 2019) was previously authorized. To date, the monitoring for that project and for the density surveys have not recorded a sighting of hooded seal in the project area (Cianbro 2018a, b; NAVFAC Mid-Atlantic 2018, 2019b; Navy 2019; Stantec 2020; Stantec 2021). In order to guard against unauthorized

take, the Navy requested and NMFS is authorizing one take by Level B harassment of hooded seal per month (between the months of January and May) resulting in five total takes of Level B harassment. No take by Level A harassment is anticipated or authorized.

Harp Seal

Harp seals may be present in the project vicinity January through May. In general, harp seals are much rarer than the harbor seal and gray seal in the Piscataqua River. As discussed above for hooded seals, one take by Level B harassment during each month of construction for the Berth 11 Waterfront Improvements Project (NMFS 2018b) and for year 1 construction activities for Dry Dock 1 (NMFS, 2019) was previously authorized. The monitoring for the Berth 11 Waterfront

Improvements Construction and P-310 projects did not record any sightings of harp seal in the project area (Cianbro 2018a, b; NAVFAC Mid-Atlantic 2018, 2019b; Navy 2019; Stantec 2020; Stantec 2021). However, it should be noted that two harp seals (one on 5/12/2020 and one on 5/14/2020) were observed when pile driving activities were not occurring (Stantec 2020). In order to guard against unauthorized take, the Navy requested and NMFS is authorizing one take by Level B harassment of harp seal per month (between the months of January and May) resulting in five total takes of Level B harassment. No take by Level A harassment is anticipated or authorized.

Table 12 below summarizes the authorized take for all the species described above as a percentage of stock abundance.

TABLE 12—PROPOSED TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock (N _{EST})	Proposed Level A harassment	Proposed Level B harassment	Percent of stock
Harbor porpoise	Gulf of Maine/Bay of Fundy (95,543)	15	9	Less than 1 percent.
Harbor seal	Western North Atlantic (61,336)	1,269	1,125	Less than 3 percent.
Gray seal	Western North Atlantic (451,600)	85	75	Less than 1 percent.
Hooded seal	Western North Atlantic (593,500)	0	5	Less than 1 percent.

TABLE 12—PROPOSED TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE—Continued

Species	Stock (N _{EST})	Proposed Level A harassment	Proposed Level B harassment	Percent of stock
Harp seal	Western North Atlantic (7.6 million)	0	5	Less than 1 percent.

Mitigation

Under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood,

scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

General

The Navy will follow mitigation procedures as described below. In general, if poor environmental conditions restrict full visibility of the shutdown zone, pile driving activities would be delayed.

Training

The Navy will ensure that construction supervisors and crews, the monitoring team, and relevant Navy staff are trained and prior to the start of construction activity, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project shall be trained prior to commencing work.

Avoiding Direct Physical Interaction

The Navy will avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations will cease and vessels will reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.

Shutdown Zones

The Navy will establish shutdown zones for all pile driving activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type and marine mammal hearing group (Table 13).

TABLE 13—PILE DRIVING SHUTDOWN ZONE AND MONITORING ZONES DURING PROJECT ACTIVITIES

P-381 year 1 activity description	Shutdown zone (m)		Level B harassment ¹ monitoring zone (m)
	Harbor porpoise	Phocids	
78-inch cluster drill	≥ 200	≥ 50	ROI
DTH monohammer—42-inch	≥ 200	≥ 50	ROI
DTH monohammer—9-inch Center wall tie downs	≥ 200	≥ 50	ROI
DTH monohammer—9-inch tremie tie-downs	≥ 200	≥ 50	ROI
DTH monohammer—4–6-inch (500)	≥ 200	≥ 50	ROI
Impact install of sheet piles (16) West Closure Wall Tie-in	≥ 200	≥ 50	ROI
Impact install of sheet piles (60) Secant pile guide wall; (96) temporary coffer dam	≥ 200	≥ 50	ROI
Rock hammering—all durations	≥ 200	≥ 50	ROI
Rotary drilling—Install 102-inch casing	10	10	ROI
Rotary drilling—Predrill 102-inch socket	10	10	ROI
Rotary drilling—Remove 102-inch casing	10	10	ROI
Vibratory pile driving (16) 28-inch sheets	20	10	ROI
Vibratory pile driving (60) and (96) 28-inch sheets	20	10	ROI
Vibratory extraction (238) 28-inch sheets	10	10	ROI

Notes:

¹ In instances where the harassment zone is larger than the ROI, the entire ROI is indicated as the limit of monitoring.

² Reduced Monitoring area distance negotiated with NMFS.

Key: ROI—region of influence.

Soft Start

The Navy will use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period. Then two subsequent reduced-energy strike sets would occur. A soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start is not required during vibratory pile driving activities.

Bubble Curtain

A bubble curtain will be installed across any openings at the entrance of super flood basin to attenuate sound for the sound sources that encompass the entire ROI, which include during DTH excavation (DTH mono-hammer and cluster drill), hydraulic rock hammering and impact pile driving of sheet piles. The Navy will record hydroacoustic measurements inside and outside of the bubble curtain. Should the results of the recordings inside the bubble curtain show that thresholds are not being exceeded by the activity occurring, that upon review of the data by NMFS, Navy may discontinue use of the bubble curtain for those activities that are not actually exceeding thresholds.

Based on our evaluation of the applicant's planned measures, NMFS has determined that the mitigation measures provide the means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as for ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved

understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

The Navy will submit a Marine Mammal Monitoring Plan to NMFS for approval in advance of the start of construction.

Monitoring Zones

The Navy will conduct monitoring to include the area within the Level B harassment zones (areas where SPLs are equal to or exceed the 160 dB RMS threshold for impact driving and the 120 dB RMS threshold during vibratory pile driving) (see Table 13 above). These monitoring zones provide utility for monitoring conducted for mitigation purposes (*i.e.*, shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of the disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area, but outside the shutdown zone, and thus prepare for potential shutdowns of activity.

Visual Monitoring

Monitoring will take place from 30 minutes (min) prior to initiation of pile driving activity (*i.e.*, pre-start clearance monitoring) through 30 min post-completion of pile driving activity. If a

marine mammal is observed entering or within the shutdown zones, pile driving will be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 min have passed without re-detection of the animal. Pile driving activity will be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the disturbance zone.

Protected Species Observer (PSO) Monitoring Requirements and Locations

PSOs will be responsible for monitoring, the shutdown zones, the disturbance zones and the pre-clearance zones, as well as effectively documenting Level A and B harassment take. As described in more detail in the Reporting section below, they will also (1) document the frequency at which marine mammals are present in the project area, (2) document behavior and group composition, (3) record all construction activities, and (4) document observed reactions (changes in behavior or movement) of marine mammals during each sighting. The PSOs will monitor for marine mammals during all in-water pile activities associated with the project. The Navy shall monitor the project area to the extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. Visual monitoring shall be conducted by three PSOs. It is assumed that three PSOs shall be located on boats, docks, or piers sufficient to monitor the respective ROIs given the abundance of suitable vantage points (see Figure 11–1 of the application). The PSOs must record all observations of marine mammals, regardless of distance from the pile being driven.

Monitoring of pile driving will be conducted by qualified, PSOs. The Navy shall adhere to the following conditions when selecting PSOs:

- PSOs must be independent (*i.e.*, not construction personnel) and have no other assigned tasks during monitoring periods;
- At least one PSO must have prior experience performing the duties of a PSO during construction activities pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training;

- Where a team of three PSOs are required, a lead observer or monitoring coordinator shall be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization; and

The Navy will ensure that the PSOs have the following additional qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Experience and ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Hydroacoustic Monitoring

The Navy will conduct a sound source verification (SSV) study for all pile types and will follow accepted methodological standards to achieve their objectives. The Navy will submit an acoustic monitoring plan to NMFS for approval prior to the start of construction. The Navy will collect and evaluate acoustic sound record levels for 10 percent of the new rotary drilling, DTH excavation (DTH mono-hammer and cluster drill), and rock hammering activities conducted as part of P-381 (Table 14). Hydrophones will be placed at locations 10 m (33 ft) from the noise source and, where the potential for

Level A harassment exists, at a second representative monitoring location at an intermediate distance between the cetacean and phocid shutdown zones. For the 10 percent of rotary drilling, DTH excavation (DTH mono-hammer and cluster drill), and rock hammering events acoustically measured, 100 percent of the data will be analyzed.

At a minimum, the methodology includes:

- For underwater recordings, a stationary hydrophone system with the ability to measure SPLs will be placed in accordance with NMFS most recent guidance for the collection of source levels,
- Hydroacoustic monitoring will be conducted for 10 percent of each different type of activity not previously monitored as part of P-310 (Table 14). Monitoring will occur from the same locations approved by NMFS for P-310 construction activities. The resulting data set will be analyzed to examine and confirm sound pressure levels and rates of transmission loss for each separate in-water construction activity. With NMFS concurrence, these metrics will be used to recalculate the limits of shutdown and Level B harassment zones, and to make corresponding adjustments in marine mammal monitoring of these zones for use in the forthcoming rulemaking/LOA application. Hydrophones will be placed in the same manner as for P-310 construction activities. Locations of hydroacoustic recordings will be collected via GPS. A depth sounder and/or weighted tape measure will be used to determine the depth of the water. The hydrophone will be attached to a-weighted nylon cord to maintain a constant depth and distance from the pile/drill/hammer location. The nylon cord or chain will be attached to a float or tied to a static line,
- Each hydrophone (underwater) will be calibrated at the start of each action and will be checked frequently to the applicable standards of the hydrophone manufacturer,
- For each monitored location, a single hydrophone will be suspended midway in the water column in order to evaluate site-specific attenuation and propagation characteristics that may be present throughout the water column,
- Environmental data will be collected, including but not limited to,

the following: Wind speed and direction, air temperature, humidity, surface water temperature, water depth, wave height, weather conditions, and other factors that could contribute to influencing the airborne and underwater sound levels (e.g., aircraft, boats, etc.),

- The chief inspector will supply the acoustics specialist with the substrate composition, hammer/drill model and size, hammer/drill energy settings, depth of drilling, and boring rates and any changes to those settings during the monitoring;

- For acoustically monitored construction activities, data from the continuous monitoring locations will be post-processed to obtain the following sound measures:

- Maximum peak pressure level recorded for all activities, expressed in dB re 1 µPa. This maximum value will originate from the phase of drilling/hammering during which drill/hammer energy was also at maximum (referred to as Level 4),
- From all activities occurring during the Level 4 phase these additional measures will be made, as appropriate:
 - Mean, median, minimum, and maximum RMS pressure level in (dB re 1 µPa),
 - Mean duration of a pile strike (based on the 90 percent energy criterion),
 - Number of hammer strikes, and;
 - Mean, median, minimum, and maximum single strike SEL (dB re µPa² sec).
- Cumulative SEL as defined by the mean single strike SEL + 10*log (number of hammer strikes) (dB re µPa² sec),
- Median integration time used to calculate SPL RMS,
- A frequency spectrum (pressure spectral density) (dB re µPa² per Hz) based on the average of up to eight successive strikes with similar sound. Spectral resolution will be 1 Hz, and the spectrum will cover nominal range from 7 Hz to 20 kHz, and;
- Finally, the cumulative SEL will be computed from all the strikes associated with each pile occurring during all phases, i.e., soft start, Level 1 to Level 4. This measure is defined as the sum of all single strike SEL values. The sum is taken of the antilog, with log₁₀ taken of result to express (dB re µPa² sec).

TABLE 14—HYDROACOUSTIC MONITORING SUMMARY

Size	Count	Activity	Number monitored
102-inch	94	Rotary Drill	9
78-inch	94	DTH Cluster Drill	9
42-inch	445	DTH Mono-hammer	10

TABLE 14—HYDROACOUSTIC MONITORING SUMMARY—Continued

Size	Count	Activity	Number monitored
9-inch	154	DTH Mono-hammer	10
4 to 6-inch	2,701	DTH Mono-hammer	10
NA	252 days	Rock Hammering	10

Marine Mammal Monitoring Reporting

The Navy will submit a draft report to NMFS within 90 calendar days of the completion of monitoring or 60 calendar days prior to the requested issuance of any subsequent IHA for construction activity at the same location, whichever comes first. The report will detail the monitoring protocol and summarize the data recorded during monitoring. The final report must be prepared and submitted within 30 days following resolution of any NMFS comments on the draft report. If no comments are received from NMFS within 30 days of receipt of the draft report, the report will be considered final. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments. All draft and final marine mammal monitoring reports must be submitted to

PR.ITP.MonitoringReports@noaa.gov and *ITP.Egger@noaa.gov*. The report must contain the following informational elements, at minimum, (and be included in the Marine Mammal Monitoring Plan), including:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including:
 - How many and what type of piles were driven and by what method (e.g., impact or vibratory); and
 - Total duration of driving time for each pile (vibratory driving) and number of strikes for each pile (impact driving);
 - PSO locations during marine mammal monitoring;
 - Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
 - Upon observation of a marine mammal, the following information:
 - PSO who sighted the animal and PSO location and activity at time of sighting;
 - Time of sighting;
 - Identification of the animal (e.g., genus/species, lowest possible

taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;

- Distance and bearing of each marine mammal observed to the pile being driven for each sighting (if pile driving was occurring at time of sighting);
- Estimated number of animals (minimum/maximum/best);
- Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.);
- Animal's closest point of approach and estimated time spent within the harassment zone; and
- Description of any marine mammal behavioral observations (e.g., observed behaviors such as feeding or traveling), including an assessment of behavioral responses to the activity (e.g., no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
 - Detailed information about implementation of any mitigation (e.g., shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal, if any; and
 - All PSO datasheets and/or raw sightings data.

Reporting of Hydroacoustic Monitoring

The Navy will also submit a draft hydroacoustic monitoring report to NMFS within 60 workdays of the completion of required monitoring at the end of the project. The report will detail the hydroacoustic monitoring protocol and summarize the data recorded during monitoring. The final report must be prepared and submitted within 30 days following resolution of any NMFS comments on the draft report. If no comments are received from NMFS within 30 days of receipt of the draft report, the report shall be considered final. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments. All draft and final hydroacoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Egger@noaa.gov*. The hydroacoustic monitoring report will contain the informational elements

described in the Hydroacoustic Monitoring Plan and, at minimum, will include:

- Hydrophone equipment and methods: Recording device, sampling rate, distance (m) from the pile where recordings were made; depth of water and recording device(s);
- Type and size of pile being driven, substrate type, method of driving during recordings (e.g., hammer model and energy), and total pile driving duration;
- Whether a sound attenuation device is used and, if so, a detailed description of the device used and the duration of its use per pile;
- For impact pile driving and/or DTH excavation (DTH mono-hammer and cluster drill) (per pile): Number of strikes and strike rate; depth of substrate to penetrate; pulse duration and mean, median, and maximum sound levels (dB re: 1 µPa): Root mean square sound pressure level (SPLrms); cumulative sound exposure level (SELcum), peak sound pressure level (SPLpeak), and single-strike sound exposure level (SELS-s);
- For vibratory driving/removal and/or DTH excavation (DTH mono-hammer and cluster drill) (per pile): Duration of driving per pile; mean, median, and maximum sound levels (dB re: 1 µPa): Root mean square sound pressure level (SPLrms), cumulative sound exposure level (SELcum) (and timeframe over which the sound is averaged); and
- One-third octave band spectrum and power spectral density plot.
- General Daily Site Conditions
 - Date and time of activities,
 - Water conditions (e.g., sea state, tidal state); and
 - Weather conditions (e.g., percent cover, visibility).

Reporting of Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Navy will report the incident to NMFS Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS (301-427-8401) and to the Greater Atlantic Region New England/ Mid-Atlantic Stranding Coordinator (866-755-6622) as soon as feasible. If the death or injury was clearly caused by the specified activity, the Navy must

immediately cease the specified activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of this rule. The Navy will not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be taken through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, this introductory discussion of our analyses applies to all of the species listed in Table 1, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks in anticipated individual responses to activities, impacts of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Construction activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A and Level B harassment from underwater sounds generated by pile driving activities, rotary drilling, rock hammering, and DTH. Potential takes could occur if marine mammals are present in zones ensnared above the thresholds for Level A and Level B harassment, identified above, while activities are underway.

No serious injury or mortality would be expected even in the absence of the proposed mitigation measures. A bubble curtain will be installed across any openings at the entrance of super flood basin to attenuate sound for the sound sources that encompass the entire ROI include during DTH excavation (DTH mono-hammer and cluster drill), rock hammering, and impact pile driving of sheet piles. During all impact driving, implementation of soft start procedures and monitoring of established shutdown zones will be required, significantly reducing the possibility of injury. Given sufficient notice through use of soft start (for impact driving), marine mammals are expected to move away from an irritating sound source prior to it becoming potentially injurious. In addition, PSOs will be stationed within the action area whenever pile driving, rotary drilling, rock hammering and DTH activities are underway. The Navy shall employ the use of three PSOs to ensure all monitoring and shutdown zones are properly observed. For hooded and harp seals which are a rare species in within the project area, we do not anticipate any take by Level A harassment.

The Navy's planned activities and associated impacts will occur within a limited area. Most of the work will occur behind the existing super flood basin walls that would act as a barrier to sound and would contain underwater noise to within a small portion of the Piscataqua River. Exposures to elevated sound levels produced during pile

driving activities may cause behavioral disturbance of some individuals, but they are expected to be mild and temporary and further minimized by the use of a bubble curtain and soft starts. As described previously, the mitigation and monitoring measures are expected to further reduce the likelihood of injury as well as reduce behavioral disturbances.

Effects on individuals that are taken by Level B harassment, as enumerated in the Estimated Take section, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.*, Thorson and Reyff 2006). Most likely, individual animals will simply move away from the sound source and be temporarily displaced from the area, although even this reaction has been observed primarily only in association with impact pile driving. The activities analyzed here are similar to numerous other construction activities conducted along both Atlantic and Pacific coasts, which have taken place with no known long-term adverse consequences from behavioral harassment. These reactions and behavioral changes are expected to subside quickly when the exposures cease. Level B harassment will be minimized through use of mitigation measures described herein, including the soft starts and the use of the bubble curtain, which was not quantitatively factored into the take estimates.

Regarding Level A harassment particularly for harbor seals and gray seals, monitoring and shutdown protocols, and a bubble curtain implemented during DTH excavation (DTH mono-hammer and cluster drill), hydraulic rock hammering, and impact pile driving of sheet piles would minimize potential for take by Level A harassment. For pinnipeds, the calculated Level A harassment likely overestimates PTS exposure because: (1) Seals are unlikely to remain in the Level A harassment zone underwater long enough to accumulate sufficient exposure to noise resulting in PTS, and (2) the estimate assumes that new seals are in the Level A harassment zone every day during pile driving. Further as discussed above, take by Level A harassment would be minimized due to implementation of monitoring, shutdown procedures and a bubble curtain. Nonetheless, we have considered the potential impacts of these PTS takes occurring in this analysis. The degree of PTS that may incur from the Navy's activities are not

expected to impact marine mammals such that their reproduction or survival could be affected. Similarly, data do not suggest that a single instance in which an animal accrues PTS (or TTS) and is subject to behavioral disturbance would result in impacts to reproduction or survival. If PTS were to occur, it would be at a lower level likely to accrue to a relatively small portion of the population by being a stationary activity in one particular location.

The project is also not expected to have significant adverse effects on any marine mammal habitat. The project activities will not modify existing marine mammal habitat since the project will occur within the same footprint as existing marine infrastructure. Impacts to the immediate substrate are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time but which would not be expected to have any effects on individual marine mammals. The nearshore and intertidal habitat where the project will occur is an area of consistent vessel traffic from Navy and non-Navy vessels, and some local individuals would likely be somewhat habituated to the level of activity in the area, further reducing the likelihood of more severe impacts. The closest pinniped haulout used by harbor and gray seals is 2,414 m (1.5 mi) away on the opposite side of the island and not within the ensonified area. There are no other biologically important areas for marine mammals near the project area.

In addition, impacts to marine mammal prey species are expected to be minor and temporary. Overall, the area impacted by the project is very small compared to the available surrounding habitat. The most likely impact to prey will be temporary behavioral avoidance of the immediate area. During construction activities, it is expected that some fish and marine mammals would temporarily leave the area of disturbance, thus impacting marine mammals' foraging opportunities in a limited portion of the foraging range. But, because of the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or proposed for authorization;

- No Level A harassment is anticipated or proposed for authorization for hooded seals and harp seals;

- Level A harassment proposed for authorization for harbor and gray seals will be minimized with a bubble curtain and shutdown zones and is expected to be of a lower degree that would not impact the fitness of any animals;

- Anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior;

- The required mitigation measures (*i.e.*, bubble curtain, shutdown zones) are expected to be effective in reducing the effects of the specified activity;

- Minimal impacts to marine mammal habitat/prey are expected;

- The action area is located within an active marine shipyard area,

- There is one pinniped haulouts in the vicinity of the project area, but it is on the opposite side of Seavey Island and not within the ensonified area; and

- There are no known biologically important areas in the vicinity of the project. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat and, taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers, so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Take of five of the marine mammal stocks proposed for authorization will comprise at most approximately 3 percent or less of the stock abundance (Table 12). The number of animals proposed for authorization to be taken from these stocks would be considered

small relative to the relevant stock's abundances even if each estimated take occurred to a new individual, which is an unlikely scenario. Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to the Navy for the taking of marine mammals incidental to modification and expansion of the Portsmouth Naval Shipyard Dry Dock 1 in Kittery, Maine, effective for one year from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated

Dated: April 1, 2022.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2022-07257 Filed 4-5-22; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB929]

Pacific Bluefin Tuna United States Stakeholder Meeting; Meeting Announcement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a public meeting to discuss management of Pacific bluefin tuna (PBF). This meeting is intended to discuss both commercial and recreational management of PBF and is following up to meetings held on similar topics in 2019 and 2020. It is also intended to solicit input into development of an international long-term harvest strategy for PBF. The meeting topics are described under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The virtual meeting will be held on May 4, 2022, from 9:00 a.m. to 2:00 p.m. PDT (or until business is concluded). You must complete the registration process by April 26, 2022, if you plan to attend the meeting (see **ADDRESSES**). Members of the public may submit written comments on the meeting topics or materials to Celia Barroso at celia.barroso@noaa.gov by April 26, 2022, and may also provide oral comments during the virtual meeting.

ADDRESSES: If you plan to attend the meeting, which will be held by webinar, please register at <https://forms.gle/KKR3Fo7cw1cLUoCt8>. Instructions for attending the meeting will be emailed to meeting participants in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Celia Barroso, NMFS West Coast Region at celia.barroso@noaa.gov or 562-432-1850.

SUPPLEMENTARY INFORMATION: Stakeholders have expressed an interest in developing a long-term management framework for PBF. In September 2018, the Pacific Fishery Management Council (PFMC) recommended that its Highly Migratory Species Management Team

develop a long-term management strategy for PBF (see the PFMC's "September 2018 Decision Summary Document" at <https://www.pcouncil.org/documents/2018/09/september-2018-decision-document.pdf/>). On May 2, 2019, NMFS held a stakeholder meeting in which participants discussed potential management objectives and strategies to achieve those objectives for the domestic commercial PBF fishery (see the NMFS report to the June 2019 PFMC meeting at <https://www.pcouncil.org/documents/2019/06/agenda-item-j-2-b-supplemental-nmfs-report-3-pacific-bluefin-tuna-stakeholder-meeting-and-input-to-development-of-council-harvest-strategy.pdf/>). On May 19, 2020, NMFS hosted a virtual meeting facilitated by Kearns & West that focused on domestic implementation of an IATTC resolution (see the NMFS report to the June 2020 PFMC meeting at <https://www.pcouncil.org/documents/2020/06/d-1-a-supplemental-nmfs-report-3.pdf/>). These meetings mainly discussed domestic management of PBF. NMFS is hosting a separate virtual meeting to discuss a long-term harvest strategy for PBF within the international arena on April 1, 2022 (87 FR 10175, February 23, 2022), and this May 4 meeting will provide an overview of that April 1 meeting in addition to following up to the 2019 and 2020 meetings held on domestic PBF management.

PBF U.S. Stakeholder Meeting Topics

The agenda for this meeting will be distributed to participants in advance of the meeting. The PBF U.S. stakeholder meeting topics may include, but are not limited to, the following: (1) An overview of international management of PBF and current domestic management of the U.S. PBF fishery; (2) future domestic management of commercial and recreational PBF; and (3) development of an international long-term harvest strategy.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be indicated when registering for the meeting (see **ADDRESSES**) by April 26, 2022.

Authority: 16 U.S.C. 951 *et seq.*, 16 U.S.C. 1801 *et seq.*, and 16 U.S.C. 6901 *et seq.*

Dated: April 1, 2022.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022-07318 Filed 4-5-22; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF EDUCATION

Applications for New Awards; Educational Technology, Media, and Materials for Individuals With Disabilities Program—Educational Materials in Accessible Formats for Eligible Children and Students With Disabilities; Corrections

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice; corrections.

SUMMARY: On February 9, 2022, the Department of Education (Department) published in the **Federal Register** a notice inviting applications (NIA) for new awards for fiscal year (FY) 2022 for Educational Materials in Accessible Formats for Eligible Children and Students With Disabilities, Assistance Listing Number (ALN) 84.327D. The Department is amending the NIA by increasing the estimated available funds and maximum award amount.

DATES: This correction is applicable April 6, 2022.

FOR FURTHER INFORMATION CONTACT:

Carlene Reid, U.S. Department of Education, 400 Maryland Avenue SW, Room 5083A, Potomac Center Plaza, Washington, DC 20202-5076. Telephone: (202) 245-6139. Email: carlene.reid@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: On February 9, 2022, we published the NIA in the **Federal Register** (87 FR 7433). Following the publication of the NIA, the Joint Explanatory Statement accompanying Division H of the Consolidated Appropriations Act, 2022 (Pub. L. 117-103) indicated an intent by Congress to provide no less than \$9,000,000 from the amount appropriated for the Educational Technology, Media, and Materials Program for a new Educational Materials in Accessible Formats for Eligible Children and Students With Disabilities competition. Accordingly, we are amending the NIA to notify prospective applicants that we are increasing the estimated available funds and maximum award amount. Applicants that have already submitted applications under the FY 2022 Educational Materials in Accessible Formats for Eligible Children and Students With Disabilities competition may resubmit applications, but are not required to do so. If a new application

is not submitted, the Department will use the application that was submitted by the deadline. If a new application is submitted, the Department will consider the most recent application submitted before the deadline of April 11, 2022.

Other than the estimated available funds and maximum award amount, all other requirements and conditions stated in the NIA remain the same.

Program Authority: 20 U.S.C. 1474 and 1481.

Corrections

In FR Doc. 2022–02688, appearing on pages 7433–7441 of the **Federal Register** of February 9, 2022 (87 FR 7433), we make the following corrections on page 7438, in the first column, in the section entitled “II. Award Information”:

(1) Following the heading “Estimated Available Funds:” remove “The Administration has requested \$29,547,000 for the Educational Technology, Media, and Materials for Individuals with Disabilities program for FY 2022, of which we intend to use an estimated \$8,500,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.” and add, in its place, “\$9,000,000.”

(2) Following the heading “Maximum Award:”, remove “\$8,500,000” and add, in its place, “\$9,000,000”.

Accessible Format: On request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document, the NIA, and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (TXT), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search

feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Katherine Neas,

Deputy Assistant Secretary. Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2022–07269 Filed 4–5–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Developing Hispanic-Serving Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2022 for the Developing Hispanic-Serving Institutions (DHSI) Program, Assistance Listing Number (ALN) 84.031S. This notice relates to the approved information collection under OMB control number 1840–0745.

DATES:

Applications Available: April 6, 2022.

Deadline for Transmittal of Applications: June 6, 2022.

Deadline for Intergovernmental Review: August 4, 2022.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at www.federalregister.gov/d/2021-27979. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in SAM.gov a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out of DUNS numbers is available at <https://www2.ed.gov/about/offices/list/fofo/docs/unique-entity-identifier-transition-fact-sheet.pdf>.

FOR FURTHER INFORMATION CONTACT:

Njeri Clark, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B186, Washington, DC 20202–4260. Telephone: (202) 453–6224. Email: Njeri.Clark@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The DHSI Program provides grants to assist Hispanic-Serving Institutions (HSIs) with expanding educational opportunities for, and improving the academic attainment of, Hispanic students. DHSI Program grants enable HSIs to expand and enhance the academic offerings, program quality, faculty quality, and institutional stability of colleges and universities that are educating the majority of Hispanic college students and help large numbers of Hispanic students and other low-income individuals complete postsecondary degrees.

Background: The ongoing effects of the dual crises of COVID–19 and systemic racism have affected communities across this country. Countless students have been exposed to trauma and disruptions in learning and have experienced disengagement from school and peers, negatively impacting their mental health and well-being. While all students’ overall levels of wellness have been affected, students of color and other underserved students have experienced a disproportionate burden of the pandemic.¹ In a recent article titled, “The Missing Hispanic Students: Higher ed’s future and economy depends on their coming back to college,” the author highlights how the COVID–19 pandemic has threatened the progress made by Hispanic students’ postsecondary enrollment over the last decade, and calls attention to the negative impact the loss of Hispanic students has had on institutions and communities.² According to the National Student Clearinghouse Research Center, Hispanic undergraduate enrollment fell 7 percent from 2019 to 2021.³ Therefore, it is more evident today that the engagement and retention of students will require targeted supports, including those that leverage technology, and holistic wraparound services for students who

¹ Kuhfeld, M., Soland, J., Tarasawa, B., Johnson, A., Ruzek, E., & Liu, J. (2020). Projecting the potential impact of COVID–19 school closures on academic achievement. *Educational Researcher*, 49(8), 549–565.

² www.chronicle.com/article/the-missing-hispanic-students.

³ <https://nscresearchcenter.org/stay-informed/>.

have been disproportionately affected by the pandemic.

Through leadership, practice, and data that support evidence-based decision-making, HSIs can foster a strong sense of belonging and implement robust academic programs that focus on student learning through high impact practices. Examples of such programs include undergraduate research experiences, as well as other support services that provide advising and mentoring to students and that promote retention and degree completion. HSIs can provide the necessary social and emotional supports needed to promote student success.

To this end, this competition includes two competitive preference priorities that are designed to support students holistically and promote continual success.

Priorities: This notice contains two competitive preference priorities from the Secretary's Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Competitive Preference Priorities: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 5 points to an application for each priority, depending on how well the application meets each of these priorities. Applicants may respond to one or both priorities, for a total of up to 10 additional points.

These priorities are:

Competitive Preference Priority 1: Meeting Student Social, Emotional, and Academic Needs (up to 5 Points)

Projects that are designed to improve students' social, emotional, academic, and career development, with a focus on underserved students, in the following area:

(a) Creating a positive, inclusive, and identity-safe climate at institutions of higher education through one or more of the following activities:

(1) Fostering a sense of belonging and inclusion for underserved students;

(2) Implementing evidence-based practices for advancing student success for underserved students;

(3) Providing evidence-based professional development opportunities designed to build asset-based mindsets for faculty and staff on campus and that are inclusive with regard to race, ethnicity, culture, language, and disability status.

Competitive Preference Priority 2: Increasing Postsecondary Education Access, Affordability, Completion, and Post-Enrollment Success (up to 5 Points)

Projects that are designed to increase postsecondary access, affordability, completion, and success for underserved students by addressing one or more of the following priority areas:

(a) Increasing postsecondary education access and reducing the cost of college by creating clearer pathways for students between institutions and making transfer of course credits more seamless and transparent.

(b) Increasing the number and proportion of underserved students who enroll in and complete postsecondary education programs, which may include strategies related to college preparation, awareness, application, selection, advising, counseling, and enrollment.

(c) Establishing a system of high-quality data collection and analysis, such as data on persistence, retention, completion, and post-college outcomes, for transparency, accountability, and institutional improvement.

(d) Supporting the development and implementation of student success programs that integrate multiple comprehensive and evidence-based services or initiatives, such as academic advising, structured/guided pathways, career services, credit-bearing academic undergraduate courses focused on career, and programs to meet basic needs, such as housing, childcare and transportation, student financial aid, and access to technological devices.

Definitions: The following definitions are from 34 CFR 77.1 and the Supplemental Priorities and apply to the priorities and selection criteria in this notice:

Baseline means the starting point from which performance is measured and targets are set.

Budget period means an interval of time into which a project period is divided for budgetary purposes.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Department means the U.S. Department of Education.

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution.

Evidence-based means the proposed project component is supported by

promising evidence or evidence that demonstrates a rationale.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (e.g., sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbooks:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (e.g., assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (e.g., a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Fiscal year means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30.

Grant period means the period for which funds have been awarded.

Grantee means the legal entity to which a grant is awarded and that is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award notice (GAN). For example, a GAN may name as the grantee one school or campus of a university. In this case, the granting agency usually intends, or actually intends, that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole

legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provision of grant programs in which eligibility is limited to organizations that may be only components of a legal entity.) The term “grantee” does not include any secondary recipients, such as subgrantees and contractors, that may receive funds from a grantee pursuant to a subgrant or contract.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.*, the active “ingredients” that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources such as the Pacific Education Laboratory’s Logic Model Application (www.ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp).

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.*, training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by What Works Clearinghouse (WWC) reporting a “strong evidence base” or “moderate evidence base” for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting a “positive effect” or “potentially positive effect” on a relevant outcome with no reporting of a “negative effect” or “potentially negative effect” on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.*, a study

using regression methods to account for differences between a treatment group and a comparison group); and

(B) Includes at least one statistically significant and positive (*i.e.*, favorable) effect on a relevant outcome.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.*, establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbooks.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual or any other form of legal agreement, but does not include procurement purchases, nor does it include any form of assistance that is excluded from the definition of “grant or award” in this part (See 2 CFR 200.92, “Subaward”).

Underserved student means a student in postsecondary in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) An English learner.

(d) A disconnected youth.

(e) A technologically unconnected youth.

(f) A migrant student.

(g) A student experiencing homelessness or housing insecurity.

(h) A student without documentation of immigration status.

(i) A student who is the first in their family to attend postsecondary education.

(j) A student enrolling in or seeking to enroll in postsecondary education for the first time at the age of 20 or older.

(k) A student who is working full-time while enrolled in postsecondary education.

(l) A student who is enrolled in or is seeking to enroll in postsecondary education who is eligible for a Pell Grant.

(m) An adult student in need of improving their basic skills or an adult

student with limited English proficiency.

For purposes of the definition of *underserved student* only—

English learner means an individual who is an English learner as defined in section 8101(20) of the Elementary and Secondary Education Act of 1965, as amended, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Child or student with a disability means children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401(3)) and 34 CFR 300.8, or students with disabilities, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 705(37), 705(20)(B)).

What Works Clearinghouse Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Standards Handbook, Versions 4.0 or 4.1, and WWC Procedures Handbook, Versions 4.0 or 4.1, or in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Program Authority: 20 U.S.C. 1101–1101d and 1103–1103g.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 606. (e) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants. Five-year Individual Development

Grants only. Cooperative Arrangement Grants and Planning Grants will not be awarded in FY 2022.

Estimated Available Funds:
\$45,245,314.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards:
\$500,000–\$600,000.

Estimated Average Size of Awards:
\$575,000.

Maximum Awards: We will not make an award exceeding \$600,000 for a single budget period of 12 months.

Estimated Number of Awards: 79.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information and Supplemental Requirements

1. *Eligible Applicants:* (a) Institutions of higher education (IHEs) that qualify as eligible HSIs are eligible to apply for new Individual Development Grants under the DHSI Program. To be an eligible HSI, an IHE must—

(i) Have an enrollment of needy students, as defined in section 502(b) of the HEA (section 502(a)(2)(A)(i) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(i));

(ii) Have, except as provided in section 522(b) of the HEA, average education and general expenditures that are low, per full-time equivalent (FTE) undergraduate student, in comparison with the average education and general expenditures per FTE undergraduate student of institutions that offer similar instruction (section 502(a)(2)(A)(ii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(ii));

Note: To demonstrate an enrollment of needy students and low average education and general expenditures per FTE undergraduate student, an IHE must be designated as an “eligible institution” in accordance with 34 CFR 606.3 through 606.5 and the notice inviting applications for designation as an eligible institution for the fiscal year for which the grant competition is being conducted.

Note: The notice announcing the FY 2022 process for designation of eligible institutions, and inviting applications for waiver of eligibility requirements, was published in the **Federal Register** on December 16, 2021 (86 FR 71470). Only institutions that the Department determines are eligible, or are granted a waiver, may apply for a grant in this program.

(iii) Be accredited by a nationally recognized accrediting agency or association that the Secretary has

determined to be a reliable authority as to the quality of education or training offered, or making reasonable progress toward accreditation, according to such an agency or association (section 502(a)(2)(A)(iv) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iv));

(iv) Be legally authorized to provide, and provides within the State, an education program for which the institution awards a bachelor’s degree (section 502(a)(2)(A)(iii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iii)), or be a junior or community college (section 502(a)(2)(A)(iii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iii));

(v) Have an enrollment of undergraduate FTE students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of application (section 502(a)(5)(B) of the HEA; 20 U.S.C. 1101a(a)(5)(B)); and

(vi) Provide, as an attachment to the application, the documentation the IHE relied upon in determining that at least 25 percent of the IHE’s undergraduate FTE students are Hispanic. The 25 percent requirement applies only to undergraduate Hispanic students and is calculated based upon FTE students as defined in section 502(a)(4) of the HEA. Instructions for formatting and submitting the verification documentation to *Grants.gov* are in the application package for this competition.

(b) For this program, the “end of the award year immediately preceding the date of application” refers to the end of the fiscal year prior to the application due date. For purposes of this competition, the data that we will use to determine percent enrollment is for academic year 2020–2021.

(c) In considering applications for grants under this program, the Department will compare the data and documentation the institution relied on in its application with data reported to the Department’s Integrated Postsecondary Education Data System (IPEDS), the IHE’s State-reported enrollment data, and the institutional annual report. If different percentages or data are reported in these various sources, the institution must, as part of the 25 percent assurance verification, explain the reason for the differences. If the IPEDS data show that less than 25 percent of the institution’s undergraduate FTE students are Hispanic, the burden is on the institution to show that the IPEDS data are inaccurate. If the IPEDS data indicate that the institution has an undergraduate FTE less than 25 percent, and the institution fails to demonstrate

that the IPEDS data are inaccurate, the institution will be considered ineligible.

(d) A grantee under the DHSI Program, which is authorized by title V of the HEA, may not receive a grant under any HEA, title III, part A or part B program (section 505 of the HEA; 20 U.S.C. 1101d). The title III, part A programs include the Strengthening Institutions Program, the American Indian Tribally Controlled Colleges and Universities Program, the Alaska Native and Native Hawaiian-Serving Institutions Programs, the Asian American and Native American Pacific Islander-Serving Institutions Program, the Predominantly Black Institutions Program, and the Native American-Serving Non-Tribal Institutions Program. Furthermore, a current DHSI Program grantee may not give up its HSI grant in order to receive a grant under any title III, part A program (34 CFR 606.2(c)(1)).

(e) An eligible HSI may only submit one Individual Development Grant application.

(f) Nothing in this notice alters a grantee’s obligations to comply with nondiscrimination requirements in Federal civil rights laws, including nondiscrimination on the basis of race, color, or national origin, among others.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match or exceed those grant funds with non-Federal funds (section 503(c)(2) of the HEA; 20 U.S.C. 1101b(c)(2)).

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds shall be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds. (34 CFR 606.30(b)).

c. *Indirect Cost Rate Information:* A grantee may not use an indirect cost rate to determine allowable costs under its grant.

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants—to

directly carry out project activities described in its application—to the following types of entities: Local educational agencies; State educational agencies; IHEs; nonprofit organizations. The grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantee.

4. *Other.* This program is subject to Buy America Act Requirements pursuant to the Infrastructure Investment and Jobs Act (Pub. L. 117–58). This means grantees and their subrecipients and contractors under this program may not use their grant funds for infrastructure projects or activities (e.g., construction and broadband infrastructure) unless—

(a) All iron and steel used in the infrastructure project or activity are produced in the United States;

(b) All manufactured products used in the infrastructure project or activity are produced in the United States; and

(c) All construction materials are manufactured in the United States.

IV. Application and Submission Information

1. Application Submission

Instructions: Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at www.federalregister.gov/d/2021-27979, which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at <https://www2.ed.gov/about/offices/list/fofo/docs/unique-entity-identifier-transition-fact-sheet.pdf>.

2. Submission of Proprietary

Information: Given the types of projects that may be proposed in applications for the DHSI Program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define “business information” and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you

may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under “Other Attachments Form,” please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

4. *Funding Restrictions:* We specify unallowable costs in 34 CFR 606.10(c). We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 55 pages and (2) use the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit applies to the Project Narrative, which is your complete response to the selection criteria, and any response to the competitive preference priorities, if applicable. However, the page limit does not apply to the Application for Federal Assistance form (SF–424); the ED SF–424 Supplement form; the Budget Information—Non-Construction Programs form (ED 524); the assurances and certifications; or the one-page project abstract, the program profile form, and supporting budget narrative.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants

that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line “Intent to Apply,” and include the applicant’s name and a contact person’s name and email address. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210, 606.8, and 606.22.

Applicants should address each of the following selection criteria separately for each proposed activity. We will award up to 100 points to an application under the selection criteria and up to 10 additional points to an application under the competitive preference priorities, for a total score of up to 110 points. The maximum score for each criterion is noted in parentheses.

(a) *Quality of the applicant’s comprehensive development plan.* (Up to 25 points)

The Secretary evaluates each application for a development grant based on the extent to which—

(1) The strengths, weaknesses, and significant problems of the institution’s academic programs, institutional management, and fiscal stability are clearly and comprehensively analyzed and result from a process that involved major constituencies of the institution (Up to 5 points);

(2) The goals for the institution’s academic programs, institutional management, and fiscal stability are realistic and based on comprehensive analysis (Up to 5 points);

(3) The objectives stated in the plan are measurable, related to institutional goals, and, if achieved, will contribute to the growth and self-sufficiency of the institution (Up to 5 points);

(4) The plan clearly and comprehensively describes the methods and resources the institution will use to institutionalize practice and improvements developed under the proposed project, including, in particular, how operational costs for personnel, maintenance, and upgrades of equipment will be paid with institutional resources (Up to 5 points); and

(5) The five-year plan describes how the applicant will improve its services to Hispanic and other low-income students (Up to 5 points).

Note: Under 34 CFR 606.8(a), a comprehensive development plan is an institution's strategy for achieving growth and self-sufficiency by strengthening its—

- (1) Academic programs;
- (2) Institutional management; and
- (3) Fiscal stability.

(b) *Quality of the project design.* (Up to 15 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following:

(1) The extent to which the proposed project demonstrates a rationale (as defined in this notice) (Up to 10 points); and

(2) The extent to which the proposed project is supported by promising evidence (as defined in this notice) (Up to 5 points).

Note: To establish that their projects “demonstrate a rationale,” applicants must use a logic model (as defined in this notice) and identify research or evaluation findings suggesting that a key project component is likely to improve relevant outcome. To establish that their projects are supported by “promising evidence,” applicants should cite the supporting study or studies that meet the conditions in the definition of “promising evidence” and attach the study(ies) as part of the application attachments. In addressing “promising evidence,” applicants are encouraged to align the direct student services proposed in this application to evidence-based practices identified in the selected studies. Note that the research cited to address the “promising evidence” criterion can be the same research provided to demonstrate a rationale, but only applications that include logic models can receive full points under the “demonstrates a rationale” selection factor.

(c) *Quality of activity objectives.* (Up to 10 points)

The extent to which the objectives for each activity are—

(1) Realistic and defined in terms of measurable results (Up to 5 points); and

(2) Directly related to the problems to be solved and to the goals of the comprehensive development plan (Up to 5 points).

(d) *Quality of implementation strategy.* (Up to 20 points)

The extent to which—

(1) The implementation strategy for each activity is comprehensive (Up to 10 points);

(2) The rationale for the implementation strategy for each activity is clearly described and is supported by the results of relevant studies or projects (Up to 5 points); and

(3) The timetable for each activity is realistic and likely to be attained (Up to 5 points).

(e) *Quality of the project management plan.* (Up to 10 points)

The extent to which—

(1) Procedures for managing the project are likely to ensure efficient and effective project implementation (Up to 5 points); and

(2) The project coordinator and activity directors have sufficient authority to conduct the project effectively, including access to the president or chief executive officer (Up to 5 points).

(f) *Quality of key personnel.* (Up to 5 points)

The extent to which—

(1) The past experience and training of key professional personnel are directly related to the stated activity objectives (Up to 2 points); and

(2) The time commitment of key personnel is realistic (Up to 3 points).

(g) *Quality of evaluation plan.* (up to 10 points)

The extent to which—

(1) The data elements and the data collection procedures are clearly described and appropriate to measure the attainment of activity objectives and to measure the success of the project in achieving the goals of the comprehensive development plan (Up to 5 points); and

(2) The data analysis procedures are clearly described and are likely to produce formative and summative results on attaining activity objectives and measuring the success of the project on achieving the goals of the comprehensive development plan (Up to 5 points).

(h) *Budget.* (Up to 5 points)

The extent to which the proposed costs are necessary and reasonable in relation to the project's objectives and scope.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs

or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

A panel of three non-Federal reviewers will review and score each application in accordance with the selection criteria in this notice, as well as the competitive preference priorities. A rank order funding slate will be made from this review. Awards will be made in rank order according to the average score received from the peer review.

In tie-breaking situations for development grants described in 34 CFR 606.23(b), the DHSI Program regulations in 34 CFR part 606, subpart C require that we award additional points to an application from an IHE that:

(1) Has an endowment fund of which the current market value, per FTE enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student, at comparable institutions that offer similar instruction (1 point);

(2) Has expenditures for library materials per FTE enrolled student that are less than the average expenditures for library materials per FTE enrolled student at comparable institutions that offer similar instruction (1 point); or

(3) Proposes to carry out one or more of the following activities—

(i) Faculty development (1 point);

(ii) Funds and administrative management (1 point);

(iii) Development and improvement of academic programs (2 points);

(iv) Acquisition of equipment for use in strengthening management and academic programs (1 point);

(v) Joint use of facilities (2 points); or

(vi) Student services (2 points).

If a tie remains after applying the tiebreaker mechanism above, priority will be given to applicants that addressed the statutory priority found in section 521(d) of the HEA (20 U.S.C. 1103)—the Secretary shall give priority to an application that contains satisfactory evidence that the Hispanic-Serving Institution has entered or will enter into a collaborative arrangement with at least one educational agency or organization with assistance (from funds other than funds provided under title 20 of the U.S. Code) in reducing dropout rates for Hispanic students, improving rates of academic achievement for Hispanic students, and increasing the rates at which Hispanic secondary school graduates enroll in higher education.

If a tie still remains after applying the additional point(s) and the relevant statutory priority, we will determine the ranking of applicants based on the applicant that scores the highest under the selection criteria, quality of the

applicant's comprehensive development plan, followed by quality of implementation strategy.

If a tie still remains, we will select the applicant with the lowest endowment per FTE enrolled student.

3. *Risk Assessment and Specific Conditions*: Consistent with 2 CFR 200.206, before awarding grants under this program, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System*: If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

5. *In General*: In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based

on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216); and

(c) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices*: If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements*: We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements*: Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements, please refer to 2 CFR 3474.20.

4. *Reporting*: (a) If you apply for a grant under this competition, you must

ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case, the Secretary establishes a data collection period.

5. *Performance Measures*: The Secretary has established the following key performance measures for assessing the effectiveness of the DHSI Program under 34 CFR 75.110:

(a) The annual rate of degree or certificate completion for all students, and specifically for Hispanic students, at DHSI grantee institutions.

(b) The annual persistence rate at DHSI grantee institutions for all students, and for Hispanic students in particular, from one year to the next.

(c) The percentage of all students, and of Hispanic students in particular, who transfer from a two-year HSI to a four-year institution.

(d) The number of all students, and the number of Hispanic students in particular, served by any direct student service supported by the grant.

(e) The Federal cost per undergraduate and graduate degree at institutions in the DHSI program.

6. *Continuation Awards*: In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Michelle Asha Cooper,

Deputy Assistant Secretary for Higher Education Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2022-07212 Filed 4-5-22; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

[Docket No. 22-19-LNG]

Sabine Pass Liquefaction, LLC; Application for Blanket Authorization To Export Previously Imported Liquefied Natural Gas to Non-Free Trade Agreement Countries on a Short-Term Basis

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy and Carbon Management (FECM) (formerly the Office of Fossil Energy) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on February 28, 2022, by Sabine Pass Liquefaction, LLC (SPL or Sabine Pass). SPL requests blanket authorization to export liquefied natural gas (LNG) previously imported into the United States by vessel from foreign sources in a volume equivalent to 500 billion cubic feet (Bcf) of natural gas on a cumulative basis over a two-year period. SPL filed the Application under the Natural Gas Act (NGA).

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed electronically as detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time May 6, 2022.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, DOE has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid-19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Office of Resource Sustainability staff at (202) 586-4749 or (202) 586-7893 to discuss the need for alternative arrangements. Once the Covid-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

FOR FURTHER INFORMATION CONTACT:

Jennifer Wade or Peri Ulrey, U.S. Department of Energy (FE-34), Office of Regulation, Analysis, and Engagement, Office of Resource

Sustainability, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E-042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-4749 or (202) 586-7893, jennifer.wade@hq.doe.gov or peri.ulrey@hq.doe.gov
Cassandra Bernstein, U.S. Department of Energy (GC-76), Office of the Assistant General Counsel for Energy Delivery and Resilience, Forrestal Building, Room 6D-033, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-9793, cassandra.bernstein@hq.doe.gov

SUPPLEMENTARY INFORMATION: SPL requests a short-term blanket authorization to export LNG that has been previously imported into the United States from foreign sources for a two-year period commencing on June 7, 2022. SPL states that it will export the LNG from the Sabine Pass LNG Terminal located in Cameron Parish, Louisiana, to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. This includes both countries with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries) and all other countries (non-FTA countries). This Notice applies only to the portion of the Application requesting authority to export the LNG to non-FTA countries pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a). SPL states that its existing blanket re-export authorization, set forth in DOE/FE Order No. 4545 (Docket No. 20-28-LNG), is scheduled to expire on June 6, 2022. SPL further states that it does not seek authorization to export any domestically produced natural gas or LNG.

SPL requests this authorization on its own behalf and as agent for other parties who hold title to the LNG at the time of export. Additional details can be found in SPL's Application, posted on the DOE website at: <https://www.energy.gov/fecm/articles/sabine-pass-liquefaction-llc-fe-dkt-no-22-19-lng>.

DOE Evaluation

In reviewing SPL's Application, DOE will consider any issues required by law or policy. DOE will consider domestic need for the gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial

parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 30 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

As noted, DOE is only accepting electronic submissions at this time. Please email the filing to fergas@hq.doe.gov. All filings must include a reference to "Docket No. 22-19-LNG" or "Sabine Pass Liquefaction Application" in the title line.

Please Note: Please include all related documents and attachments (e.g., exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

The Application and any filed protests, motions to intervene, notices of interventions, and comments will also be available electronically by going to the following DOE web address: <https://www.energy.gov/fecm/division-natural-gas-regulation>.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

Signed in Washington, DC, on March 31, 2022.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability.

[FR Doc. 2022-07208 Filed 4-5-22; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22-75-000.

Applicants: Enel Green Power Roseland Solar, LLC.

Description: Enel Green Power Roseland Solar, LLC submits Request for Commission Certification of Exempt Wholesale Generator Status.

Filed Date: 3/31/22.

Accession Number: 20220331-5292.

Comment Date: 5 p.m. ET 4/21/22.

Docket Numbers: EG22-76-000.

Applicants: 25 Mile Creek Windfarm LLC.

Description: 25 Mile Creek Windfarm LLC submits Request Exempt Wholesale Generator Status.

Filed Date: 3/31/22.

Accession Number: 20220331-5303.

Comment Date: 5 p.m. ET 4/21/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20-686-006.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Compliance filing: Tri-State Compliance Filing—OATT Settlement to be effective 3/26/2020.

Filed Date: 3/31/22.

Accession Number: 20220331-5218.

Comment Date: 5 p.m. ET 4/21/22.

Docket Numbers: ER21-511-003.

Applicants: Safe Harbor Water Power Corporation.

Description: Refund Report: Refund Report to be effective N/A.

Filed Date: 3/31/22.

Accession Number: 20220331-5143.

Comment Date: 5 p.m. ET 4/21/22.

Docket Numbers: ER21-2520-003.

Applicants: MATL LLP.

Description: Compliance filing: Compliance Filing ER21-2520 to be effective 5/1/2022.

Filed Date: 3/31/22.

Accession Number: 20220331-5039.

Comment Date: 5 p.m. ET 4/21/22.

Docket Numbers: ER21-2524-002.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance to ER21-2524-001 re: Order 676-1 in RM05-5-027 to be effective 5/1/2022.

Filed Date: 3/31/22.

Accession Number: 20220331-5145.

Comment Date: 5 p.m. ET 4/21/22.

Docket Numbers: ER21-2902-002.

Applicants: MATL LLP.

Description: Compliance filing: Compliance Filing ER21-2902 to be effective 5/1/2022.

Filed Date: 3/31/22.

Accession Number: 20220331-5026.

Comment Date: 5 p.m. ET 4/21/22.

Docket Numbers: ER22-937-000; ER22-938-000.

Applicants: New Market Solar ProjectCo 2, LLC, New Market Solar ProjectCo 1, LLC.

Description: Supplement to January 31, 2022 New Market Solar ProjectCo 1, LLC, et al. tariff filing.

Filed Date: 3/31/22.

Accession Number: 20220331-5238.

Comment Date: 5 p.m. ET 4/21/22.

Docket Numbers: ER22-1424-000.

Applicants: Duke Energy Florida, LLC.

Description: Report Filing: DEF—Supplement to MBR Application to be effective N/A.

Filed Date: 3/29/22.

Accession Number: 20220329-5137.

Comment Date: 5 p.m. ET 4/19/22.

Docket Numbers: ER22-1513-000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3926 Every Metro Surplus Interconnection GIA to be effective 5/31/2022.

Filed Date: 3/31/22.

Accession Number: 20220331-5008.

Comment Date: 5 p.m. ET 4/21/22.

Docket Numbers: ER22-1514-000.

Applicants: Idaho Power Company.

Description: § 205(d) Rate Filing: Magic Valley Energy LGIAs to be effective 3/23/2022.

Filed Date: 3/31/22.
Accession Number: 20220331–5029.
Comment Date: 5 p.m. ET 4/21/22.
Docket Numbers: ER22–1515–000.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): NYISO-National Grid joint 205 Amended and Restated SGIA2550 Stillwater Solar to be effective 3/21/2022.

Filed Date: 3/31/22.
Accession Number: 20220331–5111.
Comment Date: 5 p.m. ET 4/21/22.
Docket Numbers: ER22–1516–000.
Applicants: Basin Electric Power Cooperative.

Description: Tariff Amendment: Basin Electric Notice of Cancellation of Service Agreement Nos. 4 & 17 to be effective 2/8/2022.

Filed Date: 3/31/22.
Accession Number: 20220331–5129.
Comment Date: 5 p.m. ET 4/21/22.
Docket Numbers: ER22–1517–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Mid-Atlantic Interstate Transmission, LLC submits tariff filing per 35.13(a)(2)(iii): MAIT submits eight ECSAs, SA Nos. 6300–6302, 6332–6333, 6337, 6340 and 6341 to be effective 5/31/2022.

Filed Date: 3/31/22.
Accession Number: 20220331–5149.
Comment Date: 5 p.m. ET 4/21/22.
Docket Numbers: ER22–1518–000.
Applicants: Laurel Mountain BESS, LLC.

Description: Baseline eTariff Filing: Laurel Mountain BESS, LLC MBR Tariff to be effective 4/1/2022.

Filed Date: 3/31/22.
Accession Number: 20220331–5162.
Comment Date: 5 p.m. ET 4/21/22.
Docket Numbers: ER22–1519–000.
Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2022–03–31 Trans Depreciation Rates to be effective 4/1/2022.

Filed Date: 3/31/22.
Accession Number: 20220331–5167.
Comment Date: 5 p.m. ET 4/21/22.
Docket Numbers: ER22–1520–000.
Applicants: Commonwealth Edison Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Commonwealth Edison Company submits tariff filing per 35.13(a)(2)(iii): ComEd submits revisions to OATT, Attachment M–2 to be effective 5/31/2022.

Filed Date: 3/31/22.
Accession Number: 20220331–5170.
Comment Date: 5 p.m. ET 4/21/22.
Docket Numbers: ER22–1521–000.
Applicants: Sun Streams Expansion, LLC.

Description: Compliance filing: Amended and Restated Shared Facilities Common Ownership Agreement to be effective 4/1/2022.

Filed Date: 3/31/22.
Accession Number: 20220331–5190.
Comment Date: 5 p.m. ET 4/21/22.
Docket Numbers: ER22–1522–000.
Applicants: LS Power Grid California, LLC.

Description: Compliance filing: LS Power Grid California Order No. 864 Compliance Update to be effective 12/23/2020.

Filed Date: 3/31/22.
Accession Number: 20220331–5194.
Comment Date: 5 p.m. ET 4/21/22.
Docket Numbers: ER22–1523–000.
Applicants: Sun Streams 2, LLC.

Description: Compliance filing: New eTariff Baseline and Request for Administrative Cancellation to be effective 4/1/2022.

Filed Date: 3/31/22.
Accession Number: 20220331–5211.
Comment Date: 5 p.m. ET 4/21/22.
Docket Numbers: ER22–1524–000.
Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: ESM Const Agmt Jim Bridger BAA Move to be effective 3/24/2022.

Filed Date: 3/31/22.
Accession Number: 20220331–5227.
Comment Date: 5 p.m. ET 4/21/22.
Docket Numbers: ER22–1525–000.
Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: People's Electric Cooperative, Inc. Formula Rate to be effective 6/1/2022.

Filed Date: 3/31/22.
Accession Number: 20220331–5229.
Comment Date: 5 p.m. ET 4/21/22.
Docket Numbers: ER22–1526–000.
Applicants: Sun Streams 2, LLC.

Description: Compliance filing: Certificate of Concurrence to Amended and Restated Shared Facilities Agreement to be effective 4/1/2022.

Filed Date: 3/31/22.
Accession Number: 20220331–5261.
Comment Date: 5 p.m. ET 4/21/22.
Docket Numbers: ER22–1527–000.
Applicants: Sun Streams PVS, LLC.

Description: Compliance filing: Certificate of Concurrence to Amended and Restated Shared Facilities Agreement to be effective 4/1/2022.

Filed Date: 3/31/22.
Accession Number: 20220331–5283.
Comment Date: 5 p.m. ET 4/21/22.

Docket Numbers: ER22–1528–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): ISO–NE and NEPOOL; Rev. to Buyer-Side Market Power Review & Mitigation Reforms to be effective 5/30/2022.

Filed Date: 3/31/22.
Accession Number: 20220331–5296.
Comment Date: 5 p.m. ET 4/21/22.
Docket Numbers: ER22–1529–000.
Applicants: Entergy Arkansas, LLC, Entergy Services, LLC.

Description: § 205(d) Rate Filing: Entergy Arkansas, LLC submits tariff filing per 35.13(a)(2)(iii): Amended EAL–AECC Wholesale Distribution Agreement to be effective 6/1/2022.

Filed Date: 3/31/22.
Accession Number: 20220331–5321.
Comment Date: 5 p.m. ET 4/21/22.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 31, 2022.

Kimberly D. Bose,
 Secretary.

[FR Doc. 2022–07280 Filed 4–5–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP21–1187–000.
Applicants: Eastern Gas Transmission and Storage, Inc.

Description: Motion Filing: EGTS—Rate Case Motion Filing to be effective 4/1/2022.

Filed Date: 3/31/22.

Accession Number: 20220331–5012.

Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: RP22–729–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing—Morgan Stanley Capital Group to be effective 4/1/2022.

Filed Date: 3/30/22.

Accession Number: 20220330–5060.

Comment Date: 5 p.m. ET 4/11/22.

Docket Numbers: RP22–730–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing—Sempra Gas & Power Marketing, LLC to be effective 4/1/2022.

Filed Date: 3/30/22.

Accession Number: 20220330–5062.

Comment Date: 5 p.m. ET 4/11/22.

Docket Numbers: RP22–731–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing—Union Electric Company d/b/a Ameren Missouri to be effective 4/1/2022.

Filed Date: 3/30/22.

Accession Number: 20220330–5063.

Comment Date: 5 p.m. ET 4/11/22.

Docket Numbers: RP22–732–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Antero Negotiated Rate Agreement—176700_13 to be effective 4/1/2022.

Filed Date: 3/30/22.

Accession Number: 20220330–5134.

Comment Date: 5 p.m. ET 4/11/22.

Docket Numbers: RP22–733–000.

Applicants: Northern Border Pipeline Company.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement—Sequent TL373F/101326 to be effective 4/1/2022.

Filed Date: 3/30/22.

Accession Number: 20220330–5143.

Comment Date: 5 p.m. ET 4/11/22.

Docket Numbers: RP22–734–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing—Eco-Energy Natural Gas, LLC to be effective 4/1/2022.

Filed Date: 3/30/22.

Accession Number: 20220330–5163.

Comment Date: 5 p.m. ET 4/11/22.

Docket Numbers: RP22–735–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: United Energy FSS—263830 v.0 NR Agreement to be effective 4/1/2022.

Filed Date: 3/30/22.

Accession Number: 20220330–5167.

Comment Date: 5 p.m. ET 4/11/22.

Docket Numbers: RP22–736–000.

Applicants: Alliance Pipeline L.P.

Description: § 4(d) Rate Filing: Negotiated Rates—Various Apr 1 2022 Capacity Releases to be effective 4/1/2022.

Filed Date: 3/31/22.

Accession Number: 20220331–5009.

Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: RP22–737–000.

Applicants: Millennium Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Amds—SWN, DTE to be effective 4/1/2022.

Filed Date: 3/31/22.

Accession Number: 20220331–5011.

Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: RP22–738–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: Compliance filing: Compliance Tariff Filing to Docket No. CP22–1–000 to be effective 5/1/2022.

Filed Date: 3/31/22.

Accession Number: 20220331–5016.

Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: RP22–739–000.

Applicants: Wyoming Interstate Company, L.L.C.

Description: § 4(d) Rate Filing: Transportation Agreement Filing (Sequent Replacment TSA) to be effective 4/1/2022.

Filed Date: 3/31/22.

Accession Number: 20220331–5018.

Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: RP22–740–000.

Applicants: Kinetica Energy Express, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement to be effective 4/1/2022.

Filed Date: 3/31/22.

Accession Number: 20220331–5019.

Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: RP22–741–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Update Initial Retainage Rate 4–1–2022 to be effective 4/1/2022.

Filed Date: 3/31/22.

Accession Number: 20220331–5021.

Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: RP22–742–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: § 4(d) Rate Filing: 2022 ETNG Fuel Filing to be effective 5/1/2022.

Filed Date: 3/31/22.

Accession Number: 20220331–5022.

Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: RP22–743–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Conoco Apr 22) to be effective 4/1/2022.

Filed Date: 3/31/22.

Accession Number: 20220331–5023.

Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: RP22–744–000.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: Compliance filing: Flow Through of Cash-Out Revenues filed on 3–31–22 to be effective 5/1/2022.

Filed Date: 3/31/22.

Accession Number: 20220331–5024.

Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: RP22–745–000.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: Compliance filing: Flow Through of Penalty Revenues Report filed 3–31–22 to be effective N/A.

Filed Date: 3/31/22.

Accession Number: 20220331–5025.

Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: RP22–746–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Rate Agreements—4/1/2022 to be effective 4/1/2022.

Filed Date: 3/31/22.

Accession Number: 20220331–5027.

Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: RP22–747–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (EOG Apr 22) to be effective 4/1/2022.

Filed Date: 3/31/22.

Accession Number: 20220331–5028.

Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: RP22–748–000.

Applicants: Hardy Storage Company, LLC.

Description: § 4(d) Rate Filing: RAM 2022 to be effective 5/1/2022.

Filed Date: 3/31/22.

Accession Number: 20220331–5030.

Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: RP22–749–000.

Applicants: Pine Needle LNG Company, LLC.

Description: § 4(d) Rate Filing: 2022 Annual Fuel and Electric Power Tracker Filing to be effective 5/1/2022.

Filed Date: 3/31/22.

Accession Number: 20220331–5034.

Comment Date: 5 p.m. ET 4/12/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211

and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP21-1187-006.

Applicants: Eastern Gas Transmission and Storage, Inc.

Description: Submits tariff filing per 154.203: EGTS—Rate Case Motion Filing (Revised Tariff Records) to be effective 4/1/2022.

Filed Date: 03/31/2022.

Accession Number: 20220331-5013.

Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: RP22-716-001.

Applicants: Rockies Express Pipeline LLC.

Description: Compliance filing: REX 2022-03-28 RP22-716 Amendment to be effective N/A.

Filed Date: 3/28/22.

Accession Number: 20220328-5180.

Comment Date: 5 p.m. ET 4/11/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: March 31, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022-07279 Filed 4-5-22; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22-43-000]

Black Rock Wind Force, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On March 31, 2022, the Commission issued an order in Docket No. EL22-43-000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C.

824e, instituting an investigation into whether Black Rock Wind Force, LLC's Rate Schedule¹ is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Black Rock Wind Force, LLC*, 178 FERC ¶ 61,246 (2022).

The refund effective date in Docket No. EL22-43-000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22-43-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFile" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: March 31, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022-07281 Filed 4-5-22; 8:45 am]

BILLING CODE 6717-01-P

¹ Black Rock Wind Force, LLC, Reactive Rate Schedule, FERC Electric Rate Schedule No. 1 (1.0.0).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22-41-000]

Cameron LNG, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Cameron LNG Amended Expansion Project and Notice of Public Scoping Session

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Cameron LNG Amended Expansion Project involving several design modifications and enhancements to the approved Cameron Expansion Project by Cameron LNG, LLC (Cameron LNG) in Cameron and Calcasieu Parishes, Louisiana. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public interest.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of an authorization. This gathering of public input is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC, on or before 5:00 p.m. Eastern Time on May 2, 2022. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts.

Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written or verbal comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on January 18, 2022, you will need to file those comments in Docket No. CP22-41-000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Public Participation

There are four methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or FercOnlineSupport@ferc.gov.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (www.ferc.gov) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is also located on the Commission's website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; a comment on a particular project is considered a "Comment on a Filing";

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP22-41-000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852; or

(4) In lieu of sending written comments, the Commission invites you to attend the virtual public scoping session its staff will conduct by telephone, scheduled as follows:

Date: Tuesday, April 26, 2022.

Time: 6–8 p.m. Central Standard Time.

Dial-in Number: 888-790-1764.

Participant passcode: 3375073.

The primary goal of this scoping session is to have you identify the specific environmental issues and concerns that should be considered in the environmental document. Individual oral comments will be taken on a one-on-one basis with a court reporter present on the line. This format is designed to receive the maximum amount of oral comments, in a convenient way during the timeframe allotted, and is in response to the ongoing COVID-19 pandemic.

There will not be a formal presentation by Commission staff. The scoping session is scheduled from 6 p.m. to 8 p.m. Central Standard Time. You may call at any time after 6 p.m. at which time you will be placed on mute and hold. Calls will be answered in the order they are received. Once answered, you will have the opportunity to provide your comment directly to a court reporter with FERC staff or representative present on the line. A time limit of five minutes will be implemented for each commentor.

Transcripts of all comments received during the scoping session will be publicly available on FERC's eLibrary system (see the last page of this notice for instructions on using eLibrary).

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided orally at a virtual scoping session.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Summary of the Proposed Project

Cameron LNG proposes to amend its authorization under section 3 of the Natural Gas Act for the Cameron Expansion Project issued on May 5, 2016 (Docket No. CP15-560-000). Specifically, Cameron LNG proposes to

modify the approved Train 4 and perform associated design enhancements. In addition, Cameron LNG proposes to no longer construct Train 5. This project would increase the overall reliability and capacity of Train 4 and eliminate impacts from construction and operation of Train 5. The overall maximum production capacity of the Amended Expansion Project would be reduced from 9.97 to 6.75 million tonnes per annum.

The Cameron LNG Amended Expansion Project would consist of the following design enhancements of Train 4:

- Add a feed gas booster compressor;
- add propane refrigeration;
- use open art technology on natural gas liquid extraction process in lieu of a proprietary process;
- use a reduced temperature approach on air-cooled exchangers and add to the number of exchangers;
- add an End Flash Gas ("EFG") cold recovery exchanger;
- add an EFG recycle compressor;
- replace the refrigerant compressor gas turbine drives with electric motor drivers;
- add hot oil heaters in lieu of the waste heat recovery units;
- add an enclosed ground flare to handle the acid gas stream;
- add a tie-in on the Thermal Oxidizer acid gas feed line as pre-investment for possibility of future carbon sequestration; and
- utility services would be dedicated to Train 4.

The Amended Expansion Project will also include the following removal and relocation of facilities that have not yet been constructed:

- Removal of the approved Train 5 and associated utilities;
- removal of the approved LNG Tank 5 (T-205);
- removal of the condensate storage tanks permitted with the Expansion Project;
- removal of one boil-off gas compressor permitted with the Expansion Project; and
- relocation of the Entergy Switch Yard for the Expansion Project.

In addition, Cameron LNG supplemented its application on March 18, 2022, by proposing an additional design enhancement to allow for the capability to simultaneously load two LNG vessels at a rate of 12,000 cubic meters/hour at both the North and South Jetties. The dual loading supplement would result in the following changes to the amendment application:

- Upgrade one of the four LNG In-Tank Pumps in each LNG Storage Tank

(the low capacity pump in each tank will be upgraded to match the three existing high-capacity pumps):

- addition of a parallel 36-inch-diameter loading line to provide the system hydraulics necessary for the increased dual loading rate, up to 24,000 cubic meters/hour (the line would be added using interconnections to the existing loading header);
- addition of a new impoundment basin adjacent to the existing impoundment basin serving the loading area; and
- addition of a pre-investment tie-in on the acid gas feed line to the Thermal Oxidizers for Trains 1–3 to allow future connection to potential carbon sequestration facilities that may be developed in the area (similar to the pre-investment tie-in proposed for Train 4).

The general location of the project facilities is shown in appendix 1.¹

Land Requirements for Construction

The Amended Expansion Project facilities would be within the site of the existing Cameron LNG Terminal. Construction of the project would be wholly within the footprint authorized by the Commission for the Expansion Project (Docket No. CP15–560–000).

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas. Commission staff have already identified the following preliminary list of resources that may be impacted by the project and would be included in our analysis:

- Environmental justice;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an

effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary² and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environmental-environmental-documents>). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.³ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government

agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.⁴ The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes: Federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

- (1) Send an email to GasProjectAddressChange@ferc.gov stating your request. You must include the docket number CP22–41–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

- (2) Return the attached "Mailing List Update Form" (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC

¹ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called "eLibrary". For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (888) 208–3676 or TTY (202) 502–8659.

² For instructions on connecting to eLibrary, refer to the last page of this notice.

³ The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at title 40, Code of Federal Regulations, section 1501.8.

⁴ The Advisory Council on Historic Preservation's regulations are at title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at <https://www.ferc.gov/news-events/events> along with other related information.

Dated: March 31, 2022.

Kimberly D. Bose,
Secretary.

[FR Doc. 2022-07282 Filed 4-5-22; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP19-502-000; CP19-502-001]

Commonwealth LNG, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Commonwealth LNH Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the Commonwealth LNG Project, proposed by Commonwealth LNG, LLC (Commonwealth) in the above-referenced docket. Commonwealth requests authorization to site, construct, and operate a natural gas liquefaction and export terminal and an integrated Natural Gas Act Section 3 natural gas pipeline, in Cameron Parish, Louisiana.

The draft EIS assesses the potential environmental effects of the construction and operation of the Commonwealth LNG Project in accordance with the requirements of the National Environmental Policy Act (NEPA). FERC staff concludes that approval of the proposed project, with the mitigation measures recommended in the EIS, would result in some adverse environmental impacts. Most of these impacts on the environment would be reduced to less than significant levels; however, FERC staff conclude there would be significant impacts on visual resources and environmental justice communities. Regarding climate change

impacts, this EIS is not characterizing the project's greenhouse gas emissions as significant or insignificant because the Commission is conducting a generic proceeding to determine whether and how the Commission will conduct significance determinations going forward.¹

The U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Department of Energy, U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and National Oceanic and Atmospheric Administration's National Marine Fisheries Service participated as cooperating agencies in the preparation of the draft EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. Although the cooperating agencies provided input to the conclusions and recommendations presented in the draft EIS, the agencies will present their own conclusions and recommendations in their respective Records of Decision for the project.

The draft EIS addresses the potential environmental effects of the construction and operation of the following project facilities:

- Six liquefaction trains;
- six gas pre-treatment trains;
- two flare systems;
- six liquid natural gas (LNG) storage tanks;
- one marine facility consisting of an LNG carrier berth, barge dock;
- utilities (e.g., electricity generation, water, plant air, nitrogen, hot oil system);
- operation and safety systems (e.g., access and haul roads, storm protection structures, stormwater drainage systems, spill containment system, fire suppression facilities, facility lighting and security, emergency shutdown systems);
- appurtenant facilities (e.g., administrative facilities, maintenance and warehouse buildings, marine facility operator buildings, equipment enclosures and electrical rooms);
- 3.0 miles of 42-inch-diameter pipeline;
- two interconnection facilities with existing pipelines; and
- one metering station.

The Commission mailed a copy of the *Notice of Availability* of the draft EIS to federal, state, and local government representatives and agencies; elected

officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The draft EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (www.ferc.gov), on the natural gas environmental documents page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). In addition, the draft EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (<https://elibrary.ferc.gov/eLibrary/search>) select "General Search" and enter the docket number in the "Docket Number" field (i.e. CP19-502). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

The draft EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the draft EIS may do so. Your comments should focus on draft EIS's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before 5:00 p.m. Eastern Time on May 23, 2022.

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided orally. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or FercOnlineSupport@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (www.ferc.gov) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide

¹ See Order on Draft Policy Statements, 178 FERC ¶ 61,197 (2022).

comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on “eRegister.” If you are filing a comment on a particular project, please select “Comment on a Filing” as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP19–502–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend one of the virtual public comment sessions its staff will conduct by telephone to receive comments on the draft EIS, scheduled as follows:

Date and Time

Monday, April 25, 2022, 5:30–7:30 p.m. (CDT), Call in number: 800–779–8625, Participant Passcode: 3472916.

Tuesday, April 26, 2022, 2:30–4:30 p.m. (CDT), Call in number: 800–779–8625, Participant Passcode: 3472916.

The primary goal of these comment sessions is to have you identify the specific environmental issues and concerns with the draft EIS. There will not be a formal presentation by Commission staff when the session opens. Individual oral comments will be taken on a one-on-one basis with a court reporter present on the line. This format is designed to receive the maximum amount of oral comments, in a convenient way during the timeframe allotted, and is in response to the ongoing COVID–19 pandemic. Prospective commentors are encouraged to review the draft EIS to familiarize themselves with the project prior to participating in the meeting.

Each comment session is scheduled from either 5:30 to 7:30 p.m. or else 2:30 p.m. to 4:30 p.m., Central Daylight Time. You may call at any time after the listed start times, at which point you will be placed on mute and hold. Calls will be answered in the order they are received. Once answered, you will have the opportunity to provide your comment directly to a court reporter with FERC staff or representative present on the line. A time limit of 5

minutes will be implemented for each commentor.

Transcripts of all comments received during the comment sessions will be publicly available on FERC’s eLibrary system (see page 2 of this notice for instructions on using eLibrary).

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided at a virtual comment session.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission’s Rules of Practice and Procedures (18 CFR part 385.214). Motions to intervene are more fully described at <https://www.ferc.gov/ferc-online/ferc-online/how-guides>. Only intervenors have the right to seek rehearing or judicial review of the Commission’s decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Questions?

Additional information about the project is available from the Commission’s Office of External Affairs, at (866) 208–FERC, or on the FERC website (www.ferc.gov) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submissions in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Dated: March 31, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–07283 Filed 4–5–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9394–01–OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, Rhode Island Department of Environmental Management (RIDEM)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency’s (EPA) approval of the Rhode Island Department of Environmental Management (RIDEM) request to revise/modify certain of its EPA-authorized programs to allow electronic reporting. **DATES:** EPA approves the authorized program revisions/modifications as of April 6, 2022.

FOR FURTHER INFORMATION CONTACT: Shirley M. Miller, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–2908, miller.shirley@epa.gov.

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the

programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On March 21, 2022, the Rhode Island Department of Environmental Management (RIDEM) submitted an application titled Combined Air Emissions Reporting System (CAERS) for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed RIDEM's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve RIDEM's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR is being published in the **Federal Register**:

Part 52: Approval and Promulgation of Implementation Plans (SIP/Clean Air Act Title II) Reporting under CFR 50–52

RIDEM was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: March 31, 2022.

Jennifer Campbell,

Director, Office of Information Management.

[FR Doc. 2022–07198 Filed 4–5–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9210–01–OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, Pima County Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA) approval of the Pima County Department of Environmental Quality (PCDEQ) request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA approves the authorized program revisions/modifications as of April 6, 2022.

FOR FURTHER INFORMATION CONTACT:

Shirley M. Miller, U.S. Environmental Protection Agency, Office of Information

Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–2908, *miller.shirley@epa.gov*.

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On March 21, 2022, the Pima County Department of Environmental Quality (PCDEQ) submitted an application titled Combined Air Emission Reporting System (CAERS) for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed PCDEQ's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve PCDEQ's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR is being published in the **Federal Register**:

Part 52: Approval and Promulgation of Implementation Plans (SIP/Clean Air Act Title II) Reporting under CFR 50–52

PCDEQ was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: March 31, 2022.

Jennifer Campbell,

Director, Office of Information Management.

[FR Doc. 2022–07192 Filed 4–5–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0671; FRL–9726–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for New Residential Hydronic Heaters and Forced-Air Furnaces (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for New Residential Hydronic Heaters and Forced-Air Furnaces (EPA ICR Number 2442.04, OMB Control Number 2060–0693, to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through May 31, 2022. Public comments were previously requested, via the **Federal Register**, on February 8, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 6, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2020–0671, to EPA online using <https://www.regulations.gov> (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public

docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be confidential business information or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Muntasir Ali, Sector Policies and Program Division (D243-05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541-0833; email address: ali.muntasir@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at <https://www.regulations.gov>, or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA’s public docket, visit: <http://www.epa.gov/dockets>.

Abstract: Manufacturers of wood-fired residential hydronic heaters, forced-air furnaces, or other central heaters, testing laboratories, and third-party certifiers are required to comply with reporting and recordkeeping requirements for the General Provisions (40 CFR part 60, subpart A), as well as for the applicable specific standards in 40 CFR part 60 Subpart QQQQ. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records. These reports are used by EPA to determine compliance with these same standards.

Form Numbers: None.

Respondents/affected entities: Manufacturers of wood-fired residential hydronic heaters, forced-air furnaces, or other central heaters, testing laboratories, third-party certifiers.

Respondent’s obligation to respond: Mandatory (40 CFR part 60, subpart QQQQ).

Estimated number of respondents: 24 (total).

Frequency of response: Annually, biennially, every five years.

Total estimated burden: 2,390 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$950,000 (per year), which includes \$484,000 in annualized capital/startup costs. There are no operation & maintenance (O&M) costs.

Changes in the Estimates: There is a significant decrease in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to several considerations. The size of the industry (number of respondents) has decreased by half since the previously-approved ICR (2442.03), resulting in a significant decrease in both labor burden and capital/startup costs for periodic re-testing and auditing of model lines. The decrease in the number of respondents is based on certification data collected by the EPA. This ICR includes a review of the regulations as amended on April 2, 2020 at 85 FR 18448, but these amendments did not increase burden. The regulations are anticipated to change over the next three years, but these changes are not anticipated to either increase or decrease burden. The growth rate for this industry is anticipated to be zero over the next three years as manufacturers have already certified to the 2020 standards, resulting in no expenses for testing new model lines.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022-07266 Filed 4-5-22; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9287-01-OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, Georgia Department of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency’s (EPA) approval of the Georgia Department of Environmental Protection (GDEP) request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA approves the authorized program revisions/modifications as of April 6, 2022.

FOR FURTHER INFORMATION CONTACT:

Shirley M. Miller, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566-2908, miller.shirley@epa.gov.

SUPPLEMENTARY INFORMATION:

On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On March 21, 2022, the Georgia Department of Environmental Protection (GDEP) submitted an application titled Georgia Department of Environmental Protection Combined Air Emission Reporting System (CAERS) for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed GDEP’s request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA’s decision to approve GDEP’s request to revise/modify its

following EPA-authorized programs to allow electronic reporting under 40 CFR is being published in the **Federal Register**:

Part 52: Approval and Promulgation of Implementation Plans (SIP/Clean Air Act Title II) Reporting under CFR 50–52

GDEP was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: March 31, 2022.

Jennifer Campbell,

Director, Office of Information Management.

[FR Doc. 2022–07197 Filed 4–5–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9674–01–OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, Guam Environmental Protection Agency (Guam EPA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA) approval of the Guam Environmental Protection Agency request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA approves the authorized program revisions/modifications as of April 6, 2022.

FOR FURTHER INFORMATION CONTACT: Shirley M. Miller, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–2908, miller.shirley@epa.gov.

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those

programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On February 1, 2022, the Guam Environmental Protection Agency (Guam EPA) submitted an application titled Compliance Monitoring Data Portal (CMDP) for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed Guam EPA's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Guam EPA's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR is being published in the **Federal Register**:

Part 142: National Primary Drinking Water Regulations Implementation (NPDWR) reporting under CFR 141

Guam EPA was notified of EPA's determination to approve its application with respect to the authorized programs listed above. Also, in this notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve Guam's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of this **Federal Register** notice. Such requests should include the following information:

- (1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing;
- (2) A brief statement of the requesting person's interest in EPA's

determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request;

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming this determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of Guam's request to revise its part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after this notice is published, pursuant to CROMERR section 3.1000(f)(4).

Dated: March 30, 2022.

Jennifer Campbell,

Director, Office of Information Management.

[FR Doc. 2022–07195 Filed 4–5–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9673–01–OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, Delaware Department of Natural Resources and Environmental Control (DNREC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA) approval of the Delaware Department of Natural Resources and Environmental Control (DNREC) request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA approves the authorized program revisions/modifications as of April 6, 2022.

FOR FURTHER INFORMATION CONTACT: Shirley M. Miller, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200

Pennsylvania Avenue NW, Washington, DC 20460, (202) 566-2908, miller.shirley@epa.gov.

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On March 3, 2022, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted an application titled National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Tool (NeT) for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed DNREC's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve DNREC's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR is being published in the **Federal Register**:

Part 123: EPA-Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125

DNREC was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: March 30, 2022.

Jennifer Campbell,

Director, Office of Information Management.

[FR Doc. 2022-07191 Filed 4-5-22; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9108-01-OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, District of Columbia Department of Energy and Environment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA) approval of the District of Columbia Department of Energy and Environment (DOEE) request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA approves the authorized program revisions/modifications as of April 6, 2022.

FOR FURTHER INFORMATION CONTACT:

Shirley M. Miller, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 3204A, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566-2908, miller.shirley@epa.gov.

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such

approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On March 21, 2022, the District of Columbia Department of Energy and Environment (DOEE) submitted an application titled District of Columbia Department of Energy and Environment Combined Air Emission Reporting System (CAERS) for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed DOEE's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve DOEE's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR is being published in the **Federal Register**: Part 52: Approval and Promulgation of Implementation Plans (SIP/Clean Air Act Title II) Reporting under CFR 50-52

DOEE was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: March 31, 2022.

Jennifer Campbell,

Director, Office of Information Management.

[FR Doc. 2022-07194 Filed 4-5-22; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, April 7, 2022 at 10 a.m.

PLACE: Hybrid meeting: 1050 First Street NE, Washington, DC (12th floor) and

virtual. *Note:* due to the COVID-19 pandemic, the FEC's hearing room remains closed to visitors for the near term as we implement procedures for the public to safely attend. If you would like to access the meeting, see the instructions below.

STATUS: The April 7, 2022 Open Meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer Telephone: (202) 694-1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2022-07439 Filed 4-4-22; 4:15 pm]

BILLING CODE 6715-01-P

FEDERAL MARITIME COMMISSION

[Docket No. 22-08]

Achim Importing Company Inc., Complainant v. Yang Ming Marine Transport Corporation, Respondent; Notice of Filing of Complaint and Assignment

Served: March 31, 2022.

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Achim Importing Company Inc., hereinafter "Complainant", against Yang Ming Marine Transport Corporation, hereinafter "Respondent". Complainant alleges that Respondent Yang Ming Marine is a Taiwanese company and a vessel-operating ocean common carrier.

Complainant alleges that Respondents violated 46 U.S.C. 41102(b), 41102(c), 41104(a)(2), 41104(a)(5), 41104(a)(9), and 41104(a)(10) with regard to refusal to provide space on their vessels. The full text of the complaint can be found in the Commission's Electronic Reading Room at <https://www2.fmc.gov/readingroom/proceeding/22-08/>.

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding office in this proceeding shall be issued by March 31, 2023, and the final decision of the Commission shall be issued by October 16, 2023.

William Cody,

Secretary.

[FR Doc. 2022-07177 Filed 4-5-22; 8:45 am]

BILLING CODE 6730-02-P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at Secretary@fmc.gov, or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (www.fmc.gov) or by contacting the Office of Agreements at (202)-523-5793 or tradeanalysis@fmc.gov.

Agreement No.: 201360-001.

Agreement Name: CMA CGM/COSCO Central America and Caribbean—U.S. Gulf Vessel Sharing Agreement.

Parties: CMA CGM S.A. and COSCO SHIPPING Lines Co., Ltd.

Filing Party: William Campbell; CMA CGM (America) LLC.

Synopsis: The amendment updates the term of the Agreement.

Proposed Effective Date: 5/13/2022.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/43502>.

Agreement No.: 201381.

Agreement Name: WHL/HLAG Slot Charter Agreement.

Parties: Wan Hai Lines Ltd. and Wang Hai Lines (Singapore) Pte. Ltd. (acting as a single party) and Hapag-Lloyd AG.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes WHL to charter space to HLAG in the trade from China, Taiwan, Vietnam, Singapore and Malaysia to the U.S. East Coast.

Proposed Effective Date: 5/13/2022.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/60503>.

Dated: April 1, 2022.

William Cody,

Secretary.

[FR Doc. 2022-07231 Filed 4-5-22; 8:45 am]

BILLING CODE 6730-02-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Federal Reserve Payments Study (FR 3066a and FR 3066b; OMB No. 7100-0351).

DATES: Comments must be submitted on or before June 6, 2022.

ADDRESSES: You may submit comments, identified by FR 3066, by any of the following methods:

- *Agency Website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.
- *Email:* regs.comments@federalreserve.gov. Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452-3819 or (202) 452-3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW,

Room 10235, 725 17th Street NW,

Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Report title: Federal Reserve Payments Study.

Agency form numbers: FR 3066a and FR 3066b.

OMB control number: 7100-0351.

Frequency: Annually.

Respondents: Depository institutions, general-purpose credit card networks, private-label credit card merchant issuers, private-label credit card processors, general-purpose debit card networks, general-purpose prepaid card networks, automated teller machine card networks, general-purpose prepaid card processors, electronic benefits transfer card processors, private-label prepaid card issuers and processors, P2P and money transfer processors, online bill payment processors, walk-in bill payment processors, private-label ACH debit card processors, toll collection processors, online payment authentication methods processors, mobile wallet processors; and transit system operators.

Estimated number of respondents: FR 3066a, 513; FR 3066b, 133.

Estimated average hours per response: FR 3066a, 22; FR 3066b, 8.

Estimated annual burden hours: FR 3066a, 11,286; FR 3066b, 1,064.

General description of report: The Federal Reserve Payments Study (FRPS) collects information from organizations with a significant role in processing payments, including depository and financial institutions, general-purpose payment networks, third-party payment processors, issuers of private-label payment instruments, and providers of various alternative payment methods and systems and help to support the Federal Reserve System's (Federal Reserve's) role in the payments system. The FR 3066a and FR 3066b consist of a full set of surveys every three years and smaller versions of the surveys (fewer surveys, questions, or respondents) in each year between. The FRPS publishes aggregate estimates of noncash payment volumes, cash deposits and withdrawals, and related information derived from the surveys.

Proposed revisions: The Board proposes to revise the FRPS by structuring it as a partially ad hoc collection to improve its ability to collect relevant information in response to changing conditions in payments

markets by streamlining the ability to add, remove, or modify survey items and respondents based on the Federal Reserve's information needs. Under the proposed revisions, the FRPS would contain the same core substantive questions asked on prior FRPS surveys, which would generally remain consistent from year to year. However, questions could be added, modified, or removed from year to year based on the Federal Reserve's information needs.

Legal authorization and confidentiality: The Board uses the information obtained through the FR 3066a and FR 3066b to discharge its statutory responsibilities, including those under the following statutes: Section 609 of the Expedited Funds Availability Act;¹ Sections 904 and 920 of the Electronic Fund Transfers Act;² Section 15 of the Check Clearing for the 21st Century Act;³ and Sections 2A, 11, 11A, 13, and 16 of the Federal Reserve Act.⁴

The FR 3066a and FR 3066b are voluntary. The information contained in responses to the core questions of the FR 3066a and FR 3066b is nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent. The Board therefore may keep such information confidential pursuant to exemption 4 of the Freedom of Information Act (FOIA).⁵ Supplemental questions asked on each survey may vary, and the Board's ability to keep confidential responses to such questions must therefore be determined on a case-by-case basis. Responses to supplemental questions may contain nonpublic commercial information that may be kept confidential by the Board pursuant to exemption 4 of the FOIA. Some such responses may also contain information contained in or related to

¹ 12 U.S.C. 4008(c) (authorizing the Board to prescribe such regulations as it may determine appropriate to carry out its responsibility to regulate the payment system).

² 15 U.S.C. 1693b, 1693o-2 (authorizing the Board to prescribe regulations relating to interchange fees for electronic debit transactions and require any debit card issuer or payment card network to provide the Board with such information as may be necessary to carry out its responsibility to regulate interchange fees for electronic debit transactions).

³ 12 U.S.C. 5014 (authorizing the Board to prescribe such regulations as it determines necessary to implement, prevent circumvention or evasion of, or facilitate compliance with the Expedited Funds Availability Act, as amended).

⁴ 12 U.S.C. 225a, 248, 248a, 342, 360, and 248-1 (*inter alia*, requiring the Board to maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates).

⁵ 5 U.S.C. 552(b)(4).

an examination of a financial institution, which may be kept confidential under exemption 8 of the FOIA.⁶

Consultation outside the agency: As part of the routine execution of the surveys, the Federal Reserve's contractors that recruit responses and collect survey data engage with potential participants to review, explain, and obtain feedback about the surveys. These conversations help to develop or revise proposed questions to make them as relevant to and substantively consistent with industry practices as possible.

Board of Governors of the Federal Reserve System, April 1, 2022.

Margaret Shanks,

Deputy Secretary of the Board.

[FR Doc. 2022-07220 Filed 4-5-22; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Request for Extension of Time to Dispose of Assets Acquired in Satisfaction of Debts Previously Contracted (FR 4006; OMB No. 7100-0129).

DATES: Comments must be submitted on or before June 6, 2022.

ADDRESSES: You may submit comments, identified by FR 4006, by any of the following methods:

- *Agency Website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- *Email:* regs.comments@federalreserve.gov. Include the OMB number or FR number in the subject line of the message.

- *Fax:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless

modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmagrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under the authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Report title: Request for Extension of Time to Dispose of Assets Acquired in Satisfaction of Debts Previously Contracted.

Agency form number: FR 4006.

OMB control number: 7100-0129.

Frequency: On occasion.

Respondents: Bank holding companies (BHCs).

Estimated number of respondents: Section 225.12(b), 1; Section 225.22(d)(1), 20; Section 225.140(c) and (d), 12.

Estimated average hours per response: Section 225.12(b), 5; Section 225.22(d)(1), 5; Section 225.140(c) and (d), 2.

Estimated annual burden hours: Section 225.12(b), 5; Section 225.22(d)(1), 100; Section 225.140(c) and (d), 24.

General description of report: The Bank Holding Company Act of 1956 (BHC Act) and the Board's Regulation Y (12 CFR part 225) require a bank holding company that, either through foreclosure or otherwise in the ordinary course of collecting a debt previously

⁶ 5 U.S.C. 552(b)(8).

contracted (DPC), acquired voting securities of a bank or BHC or the securities or assets of a company engaged in a nonbanking activity to seek prior Board approval in order to retain ownership of those shares or assets for more than two years.

Proposed revisions: The Board proposes to revise the FR 4006 to account for the voluntary reporting provisions set forth in sections 225.140(c) and 225.140(d) of Regulation Y. These sections state, respectively, that a BHC that holds nonbanking DPC assets past the two-year statutory holding period should report annually to the appropriate Reserve Bank on its efforts to accomplish divestiture of such assets and that a BHC that holds real estate acquired as DPC property for longer than five years should keep the appropriate Reserve Bank advised on a regular basis concerning its efforts to dispose of the property.

Legal authorization and confidentiality: The FR 4006 is authorized pursuant to sections 3(a) and 4(c)(2) of the BHC Act¹ and sections 225.12(b) and 225.22(d) of the Board's Regulation Y, which permit a BHC to acquire securities or assets in the ordinary course of collecting a DPC in good faith without seeking prior Board approval if such securities or assets (DPC property) are divested within two years of acquisition. To hold the DPC property beyond this two-year period, a BHC must seek the Board's approval.² The FR 4006 is required to obtain this benefit.

The information contained on the FR 4006 is not considered confidential unless an applicant requests confidential treatment in accordance with the Board's Rules Regarding Availability of Information.³ Requests for confidential treatment of information are reviewed on a case-by-case basis. Information provided on the FR 4006 may be nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, which is protected from disclosure pursuant to

exemption 4 of the Freedom of Information Act.⁴

Board of Governors of the Federal Reserve System, April 1, 2022.

Margaret Shanks,
Deputy Secretary of the Board.

[FR Doc. 2022-07221 Filed 4-5-22; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Interagency Policy Statement on Funding and Liquidity Risk Management (FR 4198; OMB No. 7100-0326).

DATES: Comments must be submitted on or before June 6, 2022.

ADDRESSES: You may submit comments, identified by FR 4198, by any of the following methods:

- **Agency Website:** <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.
- **Email:** regs.comments@federalreserve.gov. Include the OMB number or FR number in the subject line of the message.

- **Fax:** (202) 452-3819 or (202) 452-3102.

- **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request.

Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You

may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed

¹ 12 U.S.C. 1842(a) and 1843(c)(2).

² The two-year period may be extended by the Board for up to three years in one-year increments (12 CFR 225.12(b); 12 CFR 225.22(d)(1)). The Board may provide up to five additional one-year extensions (for a total of ten years) if the DPC property is shares, real estate, or other assets where the holding company demonstrates that each extension would not be detrimental to the public interest and either the bank holding company has made good faith attempts to dispose of such shares, real estate or other assets or disposal of the shares, real estate or other assets during the initial period would have been detrimental to the company (12 CFR 225.22(d)(1)(ii)).

³ 12 CFR 261.17.

⁴ 5 U.S.C. 552(b)(4).

information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Interagency Policy Statement on Funding and Liquidity Risk Management.

Agency form number: FR 4198.

OMB control number: 7100–0326.

Frequency: Annually.

Respondents: Bank holding companies, savings and loan holding companies, state-licensed branches and agencies of foreign banks (other than insured branches), corporations organized or operating under sections 25 or 25A of the Federal Reserve Act (agreement corporations and Edge corporations), and state member banks.

Estimated number of respondents: Implementation of Recordkeeping Guidance, 37; Ongoing Recordkeeping, 4,646.

Estimated average hours per response: Implementation of Recordkeeping Guidance, 1; Ongoing Recordkeeping, 1.

Estimated annual burden hours: 154,592.

General description of report: The Interagency Policy Statement on Funding and Liquidity Risk Management (Guidance) was issued to provide consistent interagency expectations on sound practices for managing funding and liquidity risk. The Guidance includes a number of voluntary recordkeeping provisions that apply to the respondents listed above. The recordkeeping provisions relate to liquidity risk management policies, procedures, and assumptions, and contingency funding plans.

Legal authorization and confidentiality: The recordkeeping provisions of the Guidance are authorized pursuant to sections 9(6), 25, and 25A of the Federal Reserve Act ¹

(for state member banks, agreement corporations, and Edge corporations, respectively); section 5(c) of the Bank Holding Company Act ² (for bank holding companies); section 10(b)(3) of the Home Owners' Loan Act ³ (savings and loan holding companies), and section 7(c)(2) of the International Banking Act ⁴ (state-licensed branches and agencies of foreign banks, other than insured branches). The FR 4198 recordkeeping provisions are contained within guidance, which is nonbinding, and therefore are voluntary.

Because these records would be maintained at each banking organization, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in "examination, operating, or condition reports" obtained in the bank supervisory process.⁵ In addition, the information may also be kept confidential under exemption 4 for the FOIA, which protects public commercial or financial information, which is both customarily and actually treated as private by the respondent.⁶

Board of Governors of the Federal Reserve System, April 1, 2022.

Margaret Shanks,

Deputy Secretary of the Board.

[FR Doc. 2022–07222 Filed 4–5–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

² 12 U.S.C. 1844(c).

³ 12 U.S.C. 1467a(b)(3).

⁴ 12 U.S.C. 3105(c)(2).

⁵ 5 U.S.C. 552(b)(8).

⁶ 5 U.S.C. 552(b)(4).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than May 6, 2022.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to

Comments.applications@stls.frb.org:

1. *FMB Bancshares, Inc., Baldwin, Mississippi;* to become a bank holding company by acquiring Farmers & Merchants Bank, Baldwin, Mississippi.

Board of Governors of the Federal Reserve System, April 1, 2022.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–07235 Filed 4–5–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Central Bank Survey of Foreign Exchange and Derivatives Market Activity (FR 3036; OMB No. 7100–0285). The revisions are applicable as of April 2022.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer for the Federal

¹ 12 U.S.C. 324, 602, and 625.

Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Report title: Central Bank Survey of Foreign Exchange and Derivatives Market Activity.

Agency form number: FR 3036.

OMB control number: 7100-0285.

Effective Date: April 2022.

Frequency: Triennially.

Respondents: Commercial banks, brokers and dealers, and U.S. offices of foreign banking organizations with dealing operations in the U.S.

Estimated number of respondents: 21.

Estimated average hours per response: 65.

Estimated annual burden hours: 1,365.

General description of report: The Board is a member of the Bank for International Settlements (BIS), which compiles aggregate national data from each central bank to produce and publish global market statistics. The FR 3036 is a component of the U.S. portion of a global data collection (the BIS survey) that is conducted by central banks once every three years and captures information relating to the volume of foreign exchange (FX) transactions. Currently, more than 50 central banks plan to conduct the BIS survey in 2022. Aggregated data from the FR 3036 is compiled and forwarded to the BIS, which uses the data to produce and publish these statistics.

Legal authorization and confidentiality: The FR 3036 is authorized pursuant to sections 2A and 12A of the Federal Reserve Act (FRA). Section 2A of the FRA requires that the Board and the Federal Open Market Committee (FOMC) maintain long-run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates.¹ Under section 12A of the FRA, the FOMC is required to implement regulations relating to the open market operations conducted by Federal Reserve Banks. Those transactions must be governed with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country.² The Board and the FOMC use the information obtained from the FR 3036 to help fulfill these obligations. The FR 3036 is voluntary.

Individual firm information collected on the FR 3036 is considered confidential to the extent it constitutes nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent. Therefore, this information may be kept confidential under exemption 4 of the Freedom of Information Act, which exempts "trade secrets and commercial or financial information obtained from a person and privileged or confidential."³ If it should be determined that any information collected on the FR 3036 must be released, other than in the aggregate in ways that will not reveal the amounts reported by any one institution, respondents will be notified. Aggregated FR 3036 data is compiled and forwarded to the BIS, which publishes global market statistics that are aggregates of national data from the Federal Reserve and other central banks.

Current actions: On November 23, 2021, the Board published a notice in the **Federal Register** (86 FR 66560) requesting public comment for 60 days on the extension, with revision, of the Central Bank Survey of Foreign Exchange and Derivatives Market Activity. The maturity bands on the FR 3036 have been revised by replacing the existing "seven days or less" category with two categories: "one day" and "over one day and up to seven days." A new item was added: "of which back-to-back trades" under the total for spot instruments. New items "of which back-

to-back trades" and "of which compression trades" were also added for several instrument totals: Outright forwards (Table A2), FX swaps (Table A2), currency swaps (Table A5), over-the-counter (OTC) options (Table A5), FX contracts (Table A5), other products (Table A5 and Table B2), forward rate agreements (Table B1), overnight indexed swaps (Table B1), other swaps (Table B1), total OTC options (Table B2), and total interest rate contracts (Table B2). The Board also added a more significant addition in the form of a new Settlement of FX Transactions schedule (Table A7, Settlement of Foreign Exchange Transactions) to collect information on FX settlement, including a breakdown by counterparty sector, currency pair, and settlement method. The comment period for this notice expired on January 24, 2022. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, April 1, 2022.

Ann Misback,

Secretary of the Board.

[FR Doc. 2022-07213 Filed 4-5-22; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Reporting Provisions Associated with Regulation TT (FR TT; OMB No. 7100-0369).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmagrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to

¹ 12 U.S.C. 225a.

² 12 U.S.C. 263.

³ 5 U.S.C. 552(b)(4).

collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Reporting Provisions Associated with Regulation TT.

Agency form number: FR TT.

OMB control number: 7100–0369.

Frequency: On occasion.

Respondents: Bank holding companies (BHCs) and savings and loan holding companies (SLHCs) and all nonbank financial companies designated for Board supervision by the Financial Stability Oversight Council (FSOC).

Estimated number of respondents: 3.

Estimated average hours per response: 40.

Estimated annual burden hours: 120.

General description of report: The Board's Regulation TT—Supervision and Regulation Assessments of Fees (12 CFR part 246) implements the second section 11(s) of the Federal Reserve Act (FRA),¹ which directs the Board to collect assessments, fees, or other charges (collectively, assessments) from BHCs and SLHCs that meet a size threshold and from all nonbank financial companies designated for Board supervision by the FSOC (collectively, assessed companies) in an amount equal to the total expenses the Board estimates are necessary or appropriate to carry out its supervisory and regulatory responsibilities with respect to such companies. Pursuant to Regulation TT, the Board issues an annual notice of assessment to each assessed company. Assessed companies

may file a written appeal with the Board regarding the assessment.²

Legal authorization and confidentiality: The FR TT is authorized pursuant to the second section 11(s) of the FRA, which requires the Board to collect the assessments, as described above, and section 11(i) of the FRA,³ which provides that the Board shall make all rules and regulations necessary to enable the Board to effectively perform the duties, functions, or services specified in the FRA. The FR TT reporting provisions are required to obtain a benefit.

An assessed company may request confidential treatment of information contained in its appeal pursuant to exemption 4 of the Freedom of Information Act (FOIA), which protects nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent.⁴ Determinations of confidentiality based on FOIA exemption 4 would be made on a case-by-case basis.

Current actions: On December 10, 2021, the Board published a notice in the **Federal Register** (86 FR 70498) requesting public comment for 60 days on the extension, without revision, of the FR TT. The comment period for this notice expired on February 8, 2022. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, April 1, 2022.

Ann Misback,

Secretary of the Board.

[FR Doc. 2022–07230 Filed 4–5–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with Regulation Y for Minimum Requirements for Appraisal Management Companies (FR HY–5; OMB No. 7100–0370).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrahi—Office of

the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Recordkeeping and Disclosure Requirements Associated with Regulation Y for Minimum Requirements for Appraisal Management Companies.

Agency form number: FR HY–5.

OMB control number: 7100–0370.

Frequency: Event-generated.

Respondents: The FR HY–5 panel comprises federally regulated and state regulated appraisal management companies (AMCs) and U.S. states, except that AMCs that oversee 15 or fewer appraisers in a state or less than 25 appraisers in two or more states are exempt from these recordkeeping and disclosure requirements.

Estimated number of respondents: Section 225.193(a), 1; Section 225.192(b), 1,239; Section 225.193(b), 1,146; Section 225.195(c), 13; Section 225.196, 51.

Estimated average hours per response: Section 225.193(a), 40; Section 225.192(b), 0.08; Section 225.193(b), 1; Section 225.195(c), 1; Section 225.196, 1.

Estimated annual burden hours: Section 225.193(a), 40; Section

¹ 12 U.S.C. 248(s). The second section 11(s) of the Federal Reserve Act was added by section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. There are two subsections of section 11 of the Federal Reserve Act designated as (s). The provision relating to assessments is described as the "second" subsection (s) as it was enacted later in time.

² 12 CFR 246.5(b).

³ 12 U.S.C. 248(i).

⁴ 5 U.S.C. 552(b)(4).

225.192(b), 99; Section 225.193(b), 2,292; Section 225.195(c), 26; Section 225.196, 51.

General description of report: The Board's recordkeeping and disclosure requirements associated with the minimum requirements for AMCs are found in sections 225.192, 225.193, 225.195, and 225.196 of the Board's Regulation Y, Subpart M.

Pursuant to section 225.193(a), each participating state must establish and maintain within its appraiser certifying and licensing agency a registration and supervision program with the legal authority and mechanisms to, among other things, review and approve or deny an AMC's application for initial registration; require AMCs to submit reports, information, and documents; and report violations of appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions, to the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council.

Section 225.192(b) provides that an appraiser in an AMC's network or panel is deemed to remain a part of the AMC's appraiser panel until the AMC (1) sends a written notice to the appraiser removing the appraiser with an explanation or (2) receives a written notice from the appraiser asking to be removed or a notice of the death or incapacity of the appraiser. Section 225.193(b) requires each participating state to require non-federally regulated AMCs to register with the state appraiser certifying and licensing agency.

Section 225.195(c) requires a federally regulated AMC to report to the state or states in which it operates the information required to be submitted by the state pursuant to the ASC's policies regarding the determination of the AMC National Registry fee, including information relating to certain ownership limitations in the regulation.

Section 225.196 requires that each participating state submit to the ASC the information required to be submitted by the ASC regulations or guidance concerning AMCs that operate in the state.

Legal authorization and confidentiality: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 authorizes the FR HY-5. Agencies must "jointly, by rule, establish minimum requirements to be applied by a State in the registration of [AMCs]." ¹ The Agencies further must "jointly promulgate regulations for the reporting of the activities of [AMCs] to the [ASC] in

determining the payment of the annual registry fee." ² Each participating state with an appraiser certifying and licensing agency must also transmit to the ASC "[1] a roster listing individuals who have received a State certification or license . . . [2] reports on the issuance and renewal of licenses and certifications, sanctions, disciplinary actions, and license and certification revocations, and license and certification suspensions on a timely basis to the national registry of the [ASC] . . . [3] including investigations initiated and disciplinary actions taken." ³

The HY-5 reporting and recordkeeping requirements are required to obtain a benefit for states because AMCs, unless they are owned and controlled by a federally regulated depository institution, are barred from providing appraisal management services for federally related transactions in a state that has not adopted the minimum AMC requirements. ⁴ The FR HY-5 recordkeeping and disclosure requirements are mandatory for an AMC that is: (1) An AMC that is a subsidiary owned and controlled by a financial institution and regulated by a federal financial institution regulatory agency, ⁵ or (2) is registered with a state that has a state appraiser certifying and licensing agency.

The Federal Reserve does not collect information subject to the HY-5 requirements. If information subject to the HY-5 requirements is obtained as part of an examination or supervision of a financial institution, it may be considered confidential under exemption 8 of the Freedom of Information Act (FOIA). ⁶ Information subject to the HY-5 requirements may also be kept confidential under FOIA exemption 4 if it is confidential commercial or financial information that is both customarily and actually treated as private. ⁷

Current actions: On December 3, 2021, the Board published a notice in the **Federal Register** (86 FR 68664) requesting public comment for 60 days on the extension, without revision, of the FR HY-5. The comment period for this notice expired on February 1, 2022. The Board did not receive any comments.

² 12 U.S.C. 3353(e).

³ 12 U.S.C. 3338(a).

⁴ 12 U.S.C. 3353.

⁵ 12 U.S.C. 3353(c).

⁶ 5 U.S.C. 552(b)(8).

⁷ 5 U.S.C. 552(b)(4).

Board of Governors of the Federal Reserve System, April 1, 2022.

Margaret Shanks,

Deputy Secretary of the Board.

[FR Doc. 2022-07224 Filed 4-5-22; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than April 21, 2022.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291. Comments can also be sent electronically to MA@mpls.frb.org:

1. *Bosshard Bank Irrevocable Trust, u/a/d October 21, 2021, South Dakota Trust Company LLC, as trustee, both of Sioux Falls, South Dakota; Andrew R. Bosshard, individually and as trust protector of the aforementioned trust, La Crosse, Wisconsin; Nathan Bosshard-Blackley, Mill Valley, California; and Elizabeth Bosshard-Blackley, Edina, Minnesota, both individually and as investment committee members of the aforementioned trust; and Elizabeth Bosshard-Blackley 2022 Irrevocable Bank Trust, u/a/d January 7, 2022, Andrew R. Bosshard, as trustee, both of*

¹ 12 U.S.C. 3353(a).

La Crosse, Wisconsin; and Piercarlo Valdesolo, with power to remove or appoint trustee, Edina, Minnesota; all to join a group acting in concert to acquire voting shares of Bosshard Banco, Ltd., La Crosse, Wisconsin, and indirectly acquire voting shares of Intercity State Bank, Schofield, Wisconsin, and The First National Bank of Bangor, Bangor, Wisconsin.

2. *Bosshard Bank Irrevocable Trust, u/a/d October 21, 2021, South Dakota Trust Company LLC, as trustee, both of Sioux Falls, South Dakota; Andrew R. Bosshard, individually and as trust protector, La Crosse, Wisconsin; Nathan Bosshard-Blackey, individually and as investment committee member, Mill Valley, California; and Elizabeth Bosshard-Blackey, individually and as investment committee member, Edina, Minnesota; to join a group acting in concert to acquire voting shares of Clayton Bankshares, Inc., and indirectly acquire voting shares of Citizens State Bank-La Crosse, both of La Crosse, Wisconsin.*

3. *Sarah M. Getzlaff, Bismarck, North Dakota; to acquire voting shares of Oliver Bancorporation, Inc., Center, North Dakota, and thereby indirectly acquire voting shares of Security First Bank of North Dakota, New Salem, North Dakota.*

Board of Governors of the Federal Reserve System, March 31, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022-07179 Filed 4-5-22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at

<https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than April 21, 2022.

A. *Federal Reserve Bank of Dallas* (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *The Estate of H.L. Baker, Jr., Sheri Barnhart, individually, and as executrix, the John R. Barnhart III Trust, the Matthew Barnhart Trust, and the Samantha Barnhart Trust, John Barnhart, Jr., individually, and with Sheri Barnhart, as co-trustees of all the trusts, all of Lake Jackson, Texas; to become the Barnhart Family Group, a group acting in concert, to retain voting shares of Austin Colony, Inc., and thereby indirectly retain voting shares of First National Bank, both of Lake Jackson, Texas.*

In addition, the Baker Management Trust, Sheri Barnhart, as trustee, both of Lake Jackson, Texas; to join the Barnhart Family Group to acquire voting shares of Austin Colony, Inc., and thereby indirectly acquire voting shares of First National Bank.

Board of Governors of the Federal Reserve System, April 1, 2022.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022-07234 Filed 4-5-22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Recordkeeping Requirements of Regulation H and Regulation K Associated with the Procedures for Monitoring Bank Secrecy Act Compliance (FR K; OMB No. 7100-0310).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of

the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Recordkeeping Requirements of Regulation H and Regulation K Associated with the Procedures for Monitoring Bank Secrecy Act Compliance.

Agency form number: FR K.

OMB control number: 7100-0310.

Frequency: Annual.

Respondents: State member banks; Edge Act and agreement corporations; and U.S. branches, agencies, and representative offices of foreign banks supervised by the Board, except for a federal branch or a federal agency or a state branch that is insured by the Federal Deposit Insurance Corporation (FDIC).

Estimated number of respondents: Establish compliance program—1; Maintenance of compliance program—906.

Estimated average hours per response: Establish compliance program—16; Maintenance of compliance program—4.

Estimated annual burden hours: Establish compliance program—16; Maintenance of compliance program—3,624.

General description of report: Section 208.63 of the Board's Regulation H—Membership of State Banking Institutions in the Federal Reserve System (12 CFR part 208) requires state member banks to establish and maintain in writing procedures reasonably designed to ensure and monitor compliance with the provisions of the Bank Secrecy Act (BSA)¹ and its implementing regulations. Sections 211.5(m)(1) and 211.24(j)(1) of the Board's Regulation K—International Banking Operations (12 CFR part 211) impose those same requirements on Edge Act and agreement corporations and, except for a federal branch or a federal agency² or a state branch that is insured by the FDIC, the U.S. branches, agencies, and representative offices of foreign banks supervised by the Board.

Legal authorization and confidentiality: The FR K is authorized pursuant to section 8(s) of the Federal Deposit Insurance Act (FDIA), which requires the federal banking agencies, including the Board, to (1) prescribe regulations requiring the institutions they regulate to establish and maintain procedures reasonably designed to assure and monitor compliance with the BSA and (2) to review such procedures during the course of their examinations (12 U.S.C. 1818(s)).³ The FR K is mandatory.

Because the records required by the FR K will be retained at banking organizations, the Freedom of Information Act (FOIA) would only be implicated if the Board's examiners obtained a copy of the records as part of the examination or supervision of a banking institution. In that case, the records may be exempt from disclosure under exemption 8 of the FOIA, which protects examination materials from disclosure (5 U.S.C. 552(b)(8)). To the extent that information retained in response to the FR K constitutes nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, it may also be kept confidential under exemption 4 of the FOIA (5 U.S.C. 552(b)(4)). Exemption 4 protects "trade secrets and commercial or financial information obtained from a

person [that is] privileged or confidential."

Current actions: On December 10, 2021, the Board published a notice in the **Federal Register** (86 FR 70496) requesting public comment for 60 days on the extension, without revision, of the FR K. The comment period for this notice expired on February 8, 2022. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, April 1, 2022.

Ann Misback,

Secretary of the Board.

[FR Doc. 2022-07226 Filed 4-5-22; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Recordkeeping Provisions Associated with Guidance on Leveraged Lending (FR 4203; OMB No. 7100-0354).

DATES: Comments must be submitted on or before June 6, 2022.

ADDRESSES: You may submit comments, identified by FR 4203, by any of the following methods:

- *Agency Website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.
- *Email:* regs.comments@federalreserve.gov. Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452-3819 or (202) 452-3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M-

4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

- a. Whether the proposed collection of information is necessary for the proper

¹ See 31 U.S.C. 5311 *et seq.*

² The terms "federal agency" and "federal branch" have the same meanings as in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101). See 12 CFR 211.21.

³ Section 8(s) of the FDIA authorizes the Board to prescribe regulations covering the entities required to comply with section 208.63 of the Board's Regulation H (12 CFR 208.63) and sections 211.5(m)(1) and 211.24(j)(1) of the Board's Regulation K (12 CFR 211.5(m)(1) and 12 CFR 211.24(j)(1)). See 12 U.S.C. 1813(c)(3), 1818(b)(3), and 1818(b)(4).

performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Recordkeeping Provisions Associated with Guidance on Leveraged Lending.

Agency form number: FR 4203.

OMB control number: 7100-0354.

Frequency: On occasion.

Respondents: The FR 4203 panel comprises all bank holding companies, savings and loan holding companies, state member banks, and state-chartered branches and agencies of foreign banks that engage in leveraged lending activities.

Many community banks are not subject to the FR 4203 because they do not engage in leveraged lending. The limited number of community and smaller institutions that are involved in leveraged lending activities may discuss with the Federal Reserve System whether and, if so, how to implement these collections of information in a cost-effective manner that is appropriate for the complexity of their exposures and activities.

Estimated number of respondents: 37.

Estimated average hours per response: 755.

Estimated annual burden hours: 27,935.

General description of report: The guidance on leveraged lending (Guidance)¹ outlines high-level

principles related to safe-and-sound leveraged lending activities. The Guidance includes a number of voluntary recordkeeping provisions that apply to financial institutions that are engaged in leveraged lending activities and for which the Board is the primary federal supervisor, including bank holding companies, savings and loan holding companies, state member banks, and state-chartered branches and agencies of foreign banks that engage in these activities.

Legal authorization and confidentiality: The recordkeeping provisions of the Guidance are authorized pursuant to sections 9(6), 25, and 25A of the Federal Reserve Act² (for state member banks, agreement corporations, and Edge corporations, respectively); section 5(c) of the Bank Holding Company Act³ (for bank holding companies); sections 10(b)(2) and 10(b)(3) of the Home Owners' Loan Act⁴ (savings and loan holding companies), and section 7(c)(2) of the International Banking Act⁵ (state-licensed branches and agencies of foreign banks, other than insured branches). The recordkeeping provisions contained in the FR 4203 are voluntary.

Because these records would be maintained at each banking organization, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. If the records were obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in "examination, operating, or condition reports" obtained in the bank supervisory process.⁶ In addition, to the extent that information contained in these records constitutes nonpublic commercial or financial information, which is both customarily and actually treated as private by a banking organization, it may be kept confidential under exemption 4 of the FOIA, which exempts "trade secrets and commercial or financial information obtained from a person and privileged or confidential."⁷

Board of Governors of the Federal Reserve System, April 1, 2022.

Ann Misback,

Secretary of the Board.

[FR Doc. 2022-07225 Filed 4-5-22; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer (Form MSD-4; OMB No. 7100-0100) and the Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer (Form MSD-5; OMB No. 7100-0101).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency

¹ "Interagency Guidance on Leveraged Lending," March 21, 2013, available at <https://www.federalreserve.gov/supervisionreg/srletters/sr1303a1.pdf>. The Guidance was published jointly by the Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

² 12 U.S.C. 324, 602, and 625, respectively.

³ 12 U.S.C. 1844(c).

⁴ 12 U.S.C. 1467a(b)(2) and (b)(3).

⁵ 12 U.S.C. 3105(c)(2).

⁶ 5 U.S.C. 552(b)(8).

⁷ 5 U.S.C. 552(b)(4).

clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collections

Report title: Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer.¹

Agency form number: Form MSD-4.

OMB control number: 7100-0100.

Frequency: Event generated.

Respondents: Each municipal securities dealer (MSD) that is a state member bank (SMB), bank holding company (BHC), or a savings and loan holding company (SLHC), certain subsidiaries of such firms, or a foreign dealer bank.²

Estimated number of respondents: Reporting, 13; Recordkeeping, 13.

Estimated average hours per response: Reporting, 0.92; Recordkeeping, 0.08.

Estimated annual burden hours: Reporting, 11.96; Recordkeeping, 1.04.

General description of report: The Municipal Securities Rulemaking Board (MSRB) rule G-7, Information Concerning Associated Persons, requires persons who are or seek to be an associated person of an MSD, either as a municipal securities principal (a person performing supervisory functions) or representative (a person engaged in underwriting, trading, or sales of municipal securities or furnishing financial advice to issuers in connection with the issuance of municipal securities) or in any other manner set forth under the rule, to provide certain background information to the MSD. The rule also requires MSDs to obtain and report this information. MSDs for which the Board is the appropriate regulatory agency (ARA) must report to the Board information required by MSRB rule G-7 using Form MSD-4. Generally, the information required by Form MSD-4 relates to employment history and professional background, including any disciplinary sanctions, as well as any

¹ As part of this clearance, the Board cleared the Form MSD-4 and Form MSD-5 under the Form MSD-4 OMB control number (7100-0100), and then discontinued the Form MSD-5's separate OMB control number (7100-0101). This non-substantive change is aimed at simplifying the tracking and clearance process for the two related forms. This change did not modify the reporting or recordkeeping requirements of the forms in any way. The collection is now titled "The Uniform Application and the Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer" (Form MSD-4 and Form MSD-5; 7100-0100).

² 15 U.S.C. 78c(34)(A)(ii).

claimed basis for exemption from MSRB examination requirements. Certain information reported on Form MSD-4 is filled out by the employee, with the rest completed by the MSD. As required by MSRB rule G-7, bank municipal securities dealers must retain copies of Form MSD-4 for each associated person during the entire term of employment.

Report title: Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer.

Agency form number: Form MSD-5.

OMB control number: 7100-0101.

Frequency: Event generated.

Respondents: Each MSD that is an SMB, BHC, or an SLHC, certain subsidiaries of such firms, or a foreign dealer bank.³

Estimated number of respondents: Reporting, 21; Recordkeeping, 21.

Estimated average hours per response: Reporting, 0.16; Recordkeeping; 0.08.

Estimated annual burden hours: Reporting, 3.36; Recordkeeping 1.68.

General description of report: An MSD for which the Board is the ARA must file Form MSD-5 with the Board when any employee previously registered as a municipal securities principal or representative is terminated for any reason. Form MSD-5 requires information such as the reason for termination and whether any investigations or actions by agencies or self-regulatory organizations (SROs) involving the associated person occurred during the period of employment.

Any SMB, BHC, or SLHC, as well as certain subsidiaries of such firms, and any foreign dealer bank that is an MSD is required to file Forms MSD-4 and MSD-5 with the Board with respect to its employees. As required by MSRB rule G-7, an MSD must retain both Form MSD-4 and Form MSD-5 for three years from the date of termination of employment.

Legal authorization and confidentiality: The Securities Exchange Act of 1934 (Exchange Act) authorizes the Securities and Exchange Commission (SEC) and MSRB to promulgate rules requiring MSDs to file reports about associated persons with the SEC and ARAs,⁴ and the Board is the ARA for most Form MSD-4 and Form MSD-5 respondents.⁵ The

³ 15 U.S.C. 78c(34)(A)(ii).

⁴ 15 U.S.C. 78o-4(a)-(b) and (q).

⁵ 15 U.S.C. 78c(a)(34)(A)(ii) (establishing the Board as the ARA for an MSD that is, or is the subsidiary of, an SLHC, SMB, or BHC (including a subsidiary of the BHC if the subsidiary does not already report to another ARA or to the SEC). While the Exchange Act does not specify the ARA for

Exchange Act further authorizes the Board to enforce compliance with the SEC's and MSRB's rules,⁶ and make rules and regulations to implement the portions of the Exchange Act for which it is responsible.⁷

Several additional statutes also authorize the Board to require submission of the Forms MSD-4 and MSD-5 by specific entities, including the Federal Reserve Act (for SMBs and their affiliates),⁸ the International Banking Act (for branches and agencies of foreign banks),⁹ the Bank Holding Company Act of 1956 (for BHCs and their subsidiaries),¹⁰ and the Home Owners' Loan Act (for SLHCs and their subsidiaries).¹¹

Filing of the Forms MSD-4 and MSD-5 is mandatory. Information provided on Forms MSD-4 and MSD-5 may be kept confidential pursuant to exemption 6 of the Freedom of Information Act (FOIA) to the extent disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy."¹² Information contained on Forms MSD-4 and MSD-5 may also be kept confidential under FOIA exemption 4 if it is confidential commercial or financial information that is both customarily and actually treated as private¹³ or under FOIA exemption 8 if it is obtained as part of an examination or supervision of a financial institution.¹⁴

Current actions: On December 8, 2021, the Board published a notice in the **Federal Register** (86 FR 69643) requesting public comment for 60 days on the extension, without revision, of the Form MSD-4 and Form MSD-5. The comment period for this notice expired on February 7, 2022. The Board did not receive any comments.

MSD activities of foreign dealer banks, the SEC has agreed that the Board should examine their MSD activities. See Letter from Catherine McGuire, Chief Counsel, SEC Division of Market Regulation, to Laura M. Homer, Assistant Director of Board S&R, June 14, 1994.

⁶ 15 U.S.C. 78o-4(c).

⁷ 15 U.S.C. 78w(a).

⁸ 12 U.S.C. 248(a)(1) (authorizing the Board to "require such statements and reports" of member banks as it may deem necessary).

⁹ 12 U.S.C. 3105(c)(2) (subjecting branches and agencies of foreign banks to reporting requirements in the same manner as if the branch or agency were a State member bank).

¹⁰ 12 U.S.C. 1844(c)(1)(A)(ii)(II) (authorizing the Board to require from a BHC or any subsidiary reports as to compliance with federal laws that the Board has jurisdiction to enforce).

¹¹ 12 U.S.C. 1467a(b)(2) (authorizing the Board to require reports from SLHCs and their subsidiaries containing such information concerning the operations of the SLHC or subsidiary as the Board may require).

¹² 5 U.S.C. 552(b)(6).

¹³ 5 U.S.C. 552(b)(4).

¹⁴ 5 U.S.C. 552(b)(8).

Board of Governors of the Federal Reserve System, April 1, 2022.

Ann Misback,

Secretary of the Board.

[FR Doc. 2022-07227 Filed 4-5-22; 8:45 am]

BILLING CODE 6210-01-P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0302; Docket No. 2022-0001; Sequence No. 3]

Information Collection; General Services Administration Acquisition Regulation; Modifications (Federal Supply Schedule) 552.238-82

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension to the information collection requirement regarding the Modifications (Federal Supply Schedule) clause.

DATES: *Submit comments on or before:* June 6, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Linn, Procurement Analyst, General Services Acquisition Policy Division, GSA, 202-445-0390 or email gsarpolicy@gsa.gov.

ADDRESSES: Submit comments identified by "Information Collection 3090-0302, Modifications (Federal Supply Schedule)" to: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "Information Collection 3090-0302, Modifications (Federal Supply Schedule)". Select the link "Submit a Comment" that corresponds with "Information Collection 3090-0302, Modifications (Federal Supply Schedule)". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090-0302, Modifications (Federal Supply Schedule)," on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite Information Collection 3090-0302, Modifications (Federal Supply Schedule), in all

correspondence related to this collection. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two-to-three days after submission to verify posting.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration Acquisition Regulation (GSAR) clause 552.238-82, Modifications (Federal Supply Schedule), which was previously titled and numbered as 552.238-81 Modifications (see *84 FR 17030* dated April 23, 2019), requires Contractors who have a GSA Federal Supply Schedule (FSS) contract to request a contract modification by submitting information to the contracting officer. The clause covers the following types of contract modification requests: Additional items/additional SINs, deletions, and price reductions. At a minimum, each contract modification request covered by this clause is to include an explanation for the request and supporting information.

B. Annual Reporting Burden

Respondents: 14,200.
Responses per Respondent: 1.
Total Responses: 14,200.
Hours per Response: 3.5.
Total Burden Hours: 49,700.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202-501-4755 or emailing GSARegSec@gsa.gov. Please cite OMB Control No. 3090-0302, "Modifications (Federal Supply Schedule)" in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2022-07232 Filed 4-5-22; 8:45 am]

BILLING CODE 6820-61-P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0246; Docket No. 2022-0001; Sequence No. 1]

Submission for OMB Review; General Services Administration Regulation; Packing List Clause

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, GSA invites the public to comment on a request to review and approve an extension of a previously approved information collection requirement regarding the packing list clause.

DATES: *Submit comments on or before:* May 6, 2022.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence Harrison Jr, Procurement Analyst, at telephone 202-227-7051, or via email at gsarpolicy@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSAR clause 552.211-77, Packing List, requires a contractor to include a packing list or other suitable document that verifies placement of an order and identifies the items shipped. In addition to information contractors would normally include on packing lists, the identification of cardholder name, telephone number and the term "Credit Card" is required.

B. Annual Reporting Burdens

Respondents: 14,923.
Responses per Respondent: 19.
Total Annual Responses: 283,233.
Hours per Response: .05.
Total Burden Hours: 14,161.

C. Public Comments

A 60-day notice published in the **Federal Register** at 87 FR 4031 on January 26, 2022. No comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division,

by calling 202-501-4755 or emailing GSARegSec@gsa.gov.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2022-07233 Filed 4-5-22; 8:45 am]

BILLING CODE 6820-61-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH), Subcommittee on Procedures Reviews (SPR), National Institute for Occupational Safety and Health (NIOSH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Subcommittee on Procedures Reviews (SPR) of the Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board). This meeting is open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcomed to listen to the meeting by joining the audio conference (information below). The audio conference line has 150 ports for callers.

DATES: The meeting will be held on May 25, 2022, from 11:00 a.m. to 3:30 p.m., EDT. Written comments must be received on or before May 18, 2022.

ADDRESSES: You may submit comments by mail to: Sherri Diana, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS C-34, Cincinnati, Ohio 45226.

Meeting Information: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1-866-659-0537; the pass code is 9933701.

FOR FURTHER INFORMATION CONTACT: Rashaun Roberts, Ph.D., Designated Federal Officer, NIOSH, CDC, 1090 Tusculum Avenue, Mailstop C-24, Cincinnati, Ohio 45226, Telephone: (513) 533-6800, Email: ocas@cdc.gov.

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC.

The charter was issued on August 3, 2001, renewed at appropriate intervals, and rechartered under Executive Order 13889 on March 22, 2020, and will terminate on March 22, 2024.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. SPR is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor (Oak Ridge Associated Universities—ORAU).

Matters to be Considered: The agenda will include discussions on the following: (a) Case reviews for Westinghouse Nuclear Fuels Division, Norton Company, (b) Parameters to Consider When Processing Claims for Construction Trade Workers, (c) Document Tracking, (d) Preparation for the August 2022 full ABRWH Meeting,

and (e) Newly Issued Guidance Documents and Supplemental topics. Agenda items are subject to change as priorities dictate. For additional information, please contact Toll Free 1(800) 232-4636.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022-07248 Filed 4-5-22; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92-463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA—CK—22—008, Building Mathematical Modeling Workforce Capacity to Support Infectious Disease and Healthcare Research.

Date: July 6, 2022.

Time: 10:00 a.m.—5:00 p.m., EDT.

Place: Teleconference, Centers for Disease Control and Prevention, Room 1080, 8 Corporate Square Boulevard, Atlanta, Georgia 30329-4027.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, 1600 Clifton Road NE, Mailstop US8-1, Atlanta, Georgia 30329-4027, Telephone: (404) 718-8833; Email: GAnderson@cdc.gov.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022-07246 Filed 4-5-22; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA-CE22-012, The CDC National Centers of Excellence in Youth Violence Prevention (YVPCs): Rigorous Evaluation of Prevention Strategies To Prevent and Reduce Community Rates of Youth Violence; Cancellation of Meeting

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT:

Aisha L. Wilkes, M.P.H., Scientific Review Officer, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway NE, Mailstop S106-9, Atlanta, Georgia 30341-3717, Telephone: (404) 639-6473, Email: AWilkes@cdc.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel—RFA-CE22-012, The CDC National Centers of Excellence in Youth Violence Prevention (YVPCs): Rigorous Evaluation of Prevention Strategies to Prevent and Reduce Community Rates of Youth Violence;

June 21–22, 2022, 8:30 a.m.–5:30 p.m., EDT.

The web conference was published in the **Federal Register** on February 1, 2022, Volume 87, Number 21, page 5482.

This meeting is being canceled in its entirety.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022-07243 Filed 4-5-22; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC-2022-0046]

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Advisory Committee to the Director, Centers for Disease Control and Prevention (ACD, CDC). This meeting is open to the public. Time will be available for public comment. The meeting will be webcast live via the World Wide Web.

DATES: The meeting will be held on May 3, 2022, from 11:00 a.m. to 4:00 p.m., EDT (times subject to change). The public may submit written comments from April 6, 2022 through April 28, 2022.

ADDRESSES: You may submit comments identified by Docket No. CDC-2022-0046 by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Kerry Caudwell, MPA, Centers for Disease Control and

Prevention, 1600 Clifton Road NE, MS H21-10, Atlanta, Georgia 30329-4027. Attn: Docket No. CDC-2022-0046.

Instructions: All submissions received must include the Agency name and Docket Number. All relevant comments received in conformance with the <https://www.regulations.gov> suitability policy will be posted without change to <https://www.regulations.gov>, including any personal information provided. For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

Written public comments submitted up to 72 hours prior to the ACD meeting will be provided to ACD members before the meeting.

Written comments received in advance of the meeting will be included in the official record of the meeting.

FOR FURTHER INFORMATION CONTACT: Kerry Caudwell, MPA, Centers for Disease Control and Prevention, Office of the Chief of Staff, 1600 Clifton Road NE, MS H21-10, Atlanta, Georgia 30329-4027, Telephone: (404) 639-7000; Email Address: ACDDirector@cdc.gov.

SUPPLEMENTARY INFORMATION:

Purpose: The Advisory Committee to the Director (ACD), CDC, shall advise the Secretary, HHS, and the Director, CDC, on policy and broad strategies that will enable CDC to fulfill its mission of protecting health through health promotion, prevention, and preparedness. The committee recommends ways to prioritize CDC's activities, improve results, and address health disparities. It also provides guidance to help CDC work more effectively with its various private and public sector constituents to make health protection a practical reality.

Matters to be Considered: The agenda will include discussions regarding CDC's current and future work in the following topic areas: (1) Data modernization; (2) laboratory quality; and (3) health equity. The Advisory Committee to the Director (ACD) will consider the formation of working groups for each of the first two topics and hear a report from the existing health equity working group on the third topic. Agenda items are subject to change as priorities dictate.

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be

posted on <https://www.regulations.gov>. Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket.

Written Public Comment: The docket will be opened to receive written comments on April 6, 2022 through April 28, 2022.

Oral Public Comment: This meeting will include time for members of the public to make an oral comment. Oral public comment will occur before any scheduled votes. Priority will be given to individuals who submit a request to make an oral public comment before the meeting according to the procedures below.

Procedure for Oral Public Comment: All persons interested in making an oral public comment at the May 3, 2022, ACD meeting must submit a request by visiting <https://www.cdc.gov/about/advisory-committee-director/> no later than 11:59 p.m., EDT, April 22, 2022, according to the instructions provided.

If the number of persons requesting to speak is greater than can be reasonably accommodated during the scheduled time, CDC will conduct a lottery to determine the speakers for the scheduled public comment session. CDC staff will notify individuals regarding their request to speak by email by April 26, 2022. To accommodate the significant interest in participation in the oral public comment session of ACD meetings, each speaker will be limited to 2 minutes, and each speaker may only speak once per meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022-07247 Filed 4-5-22; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92-463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA-OH-22-002, Panel B and Panel D, NIOSH Centers for Agricultural Safety and Health.

Dates and Times: May 9–10, 2022, Panel B, 11:00 a.m.–6:00 p.m., EDT; and May 11–12, 2022, Panel D, 11:00 a.m.–6:00 p.m., EDT.

Place: Video-Assisted Meeting.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Dan Hartley, Ed.D., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26505, Telephone: (304) 285-5812; Email: DHartley@cdc.gov.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for

both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022-07245 Filed 4-5-22; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC); Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: This gives notice under the Federal Advisory Committee Act of October 6, 1972, that the Clinical Laboratory Improvement Advisory Committee (CLIAC), Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through February 19, 2024.

FOR FURTHER INFORMATION CONTACT: Reynolds M. Salerno, Ph.D., Designated Federal Officer, Clinical Laboratory Improvement Advisory Committee (CLIAC), Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop V24-3, Atlanta, Georgia 30329-4027, Telephone: (404) 498-6516; Email: RSalerno@cdc.gov.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022-07240 Filed 4-5-22; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Board of Scientific Counselors, National Center for Health Statistics BSC, NCHS). This meeting is open to the public. Time will be available for public comment.

DATES: The meeting will be held on May 26, 2022, from 11:00 a.m. to 5:30 p.m., EDT (times subject to change).

ADDRESSES: Instructions to access the meeting will be posted here: https://www.cdc.gov/nchs/about/bsc/bsc_meetings.htm.

FOR FURTHER INFORMATION CONTACT:

Rebecca Hines, M.H.S., Executive Secretary, NCHS/CDC, Board of Scientific Counselors, 3311 Toledo Road, Room 2627, Hyattsville, Maryland 20782, Telephone: (301) 458-4717; Email: RSHines@cdc.gov.

SUPPLEMENTARY INFORMATION:

Purpose: The Board is charged with providing advice and making recommendations to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters to be Considered: The meeting agenda will include welcome remarks and a Center update by the NCHS Director; an update on CDC's Data Modernization Initiative (DMI) and DMI-funded projects at NCHS; a report out from the Population Health Survey Planning, Methodology and Data Presentation (PHSPMDP) Workgroup on their assessment of the use of panel survey data by NCHS, and; a report out from the new Workgroup to Consider and Assess Measures of Discrimination for use in NCHS surveys.

The Board will reserve time for public comment at the end of the day. Agenda items are subject to change as priorities dictate.

Meeting Information: Please visit the BSC website for details: https://www.cdc.gov/nchs/about/bsc/bsc_meetings.htm.

Further information and the meeting agenda will be available on the BSC website including instructions for accessing the live meeting broadcast.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022-07242 Filed 4-5-22; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92-463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA-OH-22-002, Panel A and Panel C, NIOSH Centers for Agricultural Safety and Health.

Dates and Times: May 9-10, 2022, Panel A, 11:00 a.m.-6:00 p.m., EDT; and May 11-12, 2022, Panel C, 11:00 a.m.-6:00 p.m., EDT.

Place: Video-Assisted Meeting.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Marilyn Ridenour, B.S.N., M.B.A., M.P.H., C.P.H., C.I.C., CAPT, USPHS,

Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26505, Telephone: (304) 285-5879; Email: MRidenour@cdc.gov.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022-07244 Filed 4-5-22; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Healthcare Infection Control Practices Advisory Committee (HICPAC)

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is seeking nominations for membership on the HICPAC. The HICPAC consists of 14 experts in fields including but not limited to, infectious diseases, infection prevention, healthcare epidemiology, nursing, clinical microbiology, surgery, hospitalist medicine, internal medicine, epidemiology, health policy, health services research, public health, and related medical fields. Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. Nominees will be selected based on expertise in the fields of infectious diseases, infection prevention, healthcare epidemiology, nursing, environmental and clinical microbiology, surgery, internal medicine, and public health. Federal employees will not be considered for membership. Members may be invited to serve for four-year terms. Selection of members is based on candidates' qualifications to contribute to the accomplishment of HICPAC objectives <https://www.cdc.gov/hicpac/>.

DATES: Nominations for membership on the HICPAC should be received no later than September 17, 2022. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, 1600 Clifton Road NE, Mailstop H16-3, Atlanta, Georgia 30329-4027, emailed (recommended) to hicpac@cdc.gov, or faxed to (404) 639-4043.

FOR FURTHER INFORMATION CONTACT: Sydnee Byrd, MPA, HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, 1600 Clifton Road NE, Mailstop H16-3, Atlanta, Georgia 30329-4027; Telephone: (404) 718-8039, Email: hicpac@cdc.gov.

SUPPLEMENTARY INFORMATION: The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, it is HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees (SGEs), requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for HICPAC membership each year and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in July 2023, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address)
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. (Candidates may submit letter(s) from

current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (e.g., CDC, NIH, FDA, etc.).

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022-07236 Filed 4-5-22; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Public Health Determination and Order Regarding Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: General notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), a component of the U.S. Department of Health and Human Services (HHS), is hereby issuing this Public Health Determination and Order Regarding Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists (Public Health Determination and Termination). This Public Health Determination and Termination terminates the Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, issued on August 2, 2021 (August Order), and all related prior orders issued pursuant to the authorities in sections 362 and 365 of the Public Health Service (PHS) Act and implementing regulations. This Termination will be implemented on May 23, 2022.

DATES: The Termination issued in this Order will be implemented on May 23, 2022.

FOR FURTHER INFORMATION CONTACT: Candice Swartwood, Division of Global Migration and Quarantine, National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H16-4, Atlanta, GA 30329. Telephone: 404-498-1600. Email: dgmqpolicyoffice@cdc.gov.

SUPPLEMENTARY INFORMATION:

Background

Coronavirus disease 2019 (COVID-19) is a quarantinable communicable disease caused by the SARS-CoV-2 virus. As part of U.S. government efforts to mitigate the introduction, transmission, and spread of COVID-19, CDC issued the August Order, replacing a prior order issued on October 13, 2020, which continued a series of orders issued pursuant to 42 U.S.C. 265, 268 and the implementing regulation at 42 CFR 71.40, suspending the right to introduce certain persons into the United States from countries or places where the quarantinable communicable disease exists in order to protect the public health from an increased risk of the introduction of COVID-19 (CDC Orders).

The CDC Orders issued under 42 U.S.C. 265, 268 and 42 CFR 71.40 were intended to reduce the risk of COVID-19 introduction, transmission, and spread at ports of entry (POE) and U.S. Border Patrol stations by significantly reducing the number and density of covered noncitizens held in these congregate settings, thereby reducing risks to U.S. citizens and residents, Department of Homeland Security and U.S. Customs and Border Patrol personnel and noncitizens at the facilities, and local healthcare systems. CDC deemed the measures included in the CDC Orders necessary for the protection of public health during the ongoing COVID-19 pandemic.

The August Order applied specifically to “covered noncitizens,” defined as “persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a POE or U.S. Border Patrol station at or near the U.S. land and adjacent coastal borders subject to certain exceptions detailed below; this includes noncitizens who do not have proper travel documents, noncitizens whose entry is otherwise contrary to law, and noncitizens who are apprehended at or near the border seeking to unlawfully enter the United States between POE.”

Three groups typically make up covered noncitizens—single adults (SA), individuals in family units (FMU), and unaccompanied noncitizen children (UC).

In the August Order, CDC committed to reassessing the public health circumstances necessitating the Order at least every 60 days by reviewing the latest information regarding the status of the COVID-19 public health emergency and associated public health risks, including migration patterns, sanitation concerns, and any improvement or deterioration of conditions at the U.S. borders. On March 11, 2022, CDC fully terminated the August Order and all previous orders issued under 42 U.S.C. 265, 268 and 42 CFR 71.40 with respect to UC based on a thorough determination of the status of the COVID-19 pandemic, an analysis of the specific care available to UC, and the absence of legitimate countervailing reliance interests on the CDC Orders. The instant Public Health Determination and Termination considers the current status of the pandemic, including the receding numbers of COVID-19 cases, hospitalizations, and deaths most recently related to the Omicron variant, and constitutes the reassessment concluding on March 30, 2022.

Based on this analysis, the CDC Director finds that, pursuant to 42 U.S.C. 265 and 42 CFR 71.40, there is no longer a serious danger that the entry of covered noncitizens, as defined by the August Order, into the United States will result in the introduction, transmission, and spread of COVID-19 and that a suspension of the introduction of covered noncitizens is no longer required in the interest of public health. While the introduction, transmission, and spread of COVID-19 into the United States is likely to continue to some degree, the cross-border spread of COVID-19 due to covered noncitizens does not present the serious danger to public health that it once did, given the range of mitigation measures now available. CDC continues to stress the need for robust COVID-19 mitigation measures at the border, including vaccination and continued masking in congregate settings. CDC has determined that the extraordinary measure of an order under 42 U.S.C. 265 is no longer necessary, particularly in light of less burdensome measures that are now available to mitigate the introduction, transmission, and spread of COVID-19. Therefore, CDC is terminating the August Order and all related prior orders issued pursuant to 42 U.S.C. 265, 268 and 42 CFR 71.40. This Termination will be implemented on May 23, 2022, to enable the

Department of Homeland Security (DHS) time to implement appropriate COVID-19 protocols, such as scaling up a program to offer COVID-19 vaccinations to migrants, and prepare for full resumption of regular migration under Title 8 authorities.

Legal Authority

CDC is hereby immediately terminating the August Order and all prior orders issued pursuant to sections 362 and 365 of the PHS Act (42 U.S.C. 265, 268) and the implementing regulation at 42 CFR 71.40.

Referenced Order

A copy of the Order is provided below, and a copy of the signed Order can be found at <https://www.cdc.gov/coronavirus/2019-ncov/cdcresponse/Final-CDC-Order-Prohibiting-Introduction-of-Persons.pdf>.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Order Under Sections 362 & 365 of the Public Health Service Act (42 U.S.C. 265, 268) and 42 CFR 71.40

Public Health Determination and Order Regarding Suspending the Right to Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists

Executive Summary

The Centers for Disease Control and Prevention (CDC), a component of the U.S. Department of Health and Human Services (HHS), is hereby issuing this Public Health Determination and Order Regarding Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists (Public Health Determination and Termination). This Public Health Determination and Termination terminates the Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, issued on August 2, 2021 (August Order),¹ and all related prior orders issued pursuant to the authorities in sections 362 and 365 of the Public Health Service (PHS) Act (42 U.S.C. 265, 268) and the implementing regulation at 42 CFR 71.40 (CDC Orders);² this

¹ Available at https://www.cdc.gov/coronavirus/2019-ncov/downloads/CDC-Order-Suspending-Right-to-Introduce-Final_8-2-21.pdf (last visited Mar. 7, 2022); see also 86 FR 42828 (Aug. 5, 2021).

² “CDC Orders” issued under these legal authorities are found at 85 FR 17060 (Mar. 26, 2020), 85 FR 22424 (Apr. 22, 2020), 85 FR 31503 (May 26, 2020), 85 FR 65806 (Oct. 16, 2020), and 86 FR 42828 (Aug. 5, 2021) (fully incorporating by

Termination will be implemented on May 23, 2022. The August Order continued a suspension of the right to introduce “covered noncitizens,” as defined in the Order,³ into the United States along the U.S. land and adjacent coastal borders.⁴ The August Order states that CDC will reassess at least every 60 days whether the Order remains necessary to protect the public health. Based on the public health landscape, the current status of the COVID-19 pandemic, and the procedures in place for the processing of covered noncitizens, taking into account the inherent risks of transmission of SARS-CoV-2 in congregate settings, CDC has determined that a suspension of the right to introduce such covered noncitizens is no longer necessary to protect U.S. citizens, U.S. nationals, lawful permanent residents, personnel and noncitizens at the ports of entry (POE) and U.S. Border Patrol stations, and destination communities in the United States. This Termination will be implemented on May 23, 2022, to enable the Department of Homeland Security (DHS) to implement appropriate COVID-19 mitigation protocols, such as scaling up a program to provide COVID-19 vaccinations to migrants, and prepare for full resumption of regular migration processing under Title 8 authorities. Until that date, it is CDC’s expectation that DHS will continue to apply exceptions outlined in the August Order to covered noncitizens as appropriate, including the exception based on the totality of an individual’s circumstances on a case-by-case basis.

Outline of Determination and Order

I. Background

- A. Evolution of the COVID-19 Pandemic and the U.S. Government Response
 1. First Wave—January to June 2020
 2. Second Wave—June to August 2020

reference 86 FR 38717 (July 22, 2021), see 86 FR 42828, 42829 at note 3).

³ See *infra* I.

⁴ The August Order specifically excepted unaccompanied noncitizen children (UC) and incorporated an exception for UC issued by CDC on July 16, 2021 (July Exception). Public Health Determination Regarding an Exception for Unaccompanied Noncitizen Children from Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/NoticeUnaccompaniedChildren.pdf> (July 16, 2021); 86 FR 38717 (July 22, 2021); see 86 FR 42828, 42829 at note 1 (Aug. 5, 2021) (which fully incorporated by reference the July Exception relating to UC). On March 11, 2022, CDC fully terminated the August Order and all prior orders issued under the same authorities with respect to UC. See <https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/NoticeUnaccompaniedChildren-update.pdf>.

3. Third Wave—Alpha Variant—September 2020 to May 2021
4. Fourth Wave—Delta Variant—June to October 2021
5. Fifth Wave—Omicron Variant—November 2021 to March 2022
- B. Current Status of the COVID-19 Pandemic
 1. Community Levels
 2. Healthcare Systems and Resources
 3. Mitigation Measures
 - a. Test Availability
 - b. Vaccines and Boosters
 - c. Treatments
 4. Congregate Settings
 5. DHS Mitigation Measures
- II. Public Health Determination
- III. Legal Considerations
 - A. Temporary Nature of Orders Under 42 U.S.C. 265 and Absence of Reliance Interests
 - B. Basis for Termination Under 42 U.S.C. 265, 268 and 42 CFR 71.40
- IV. Issuance and Implementation
 - A. Implementation of This Termination
 - B. APA Review

I. Background

Coronavirus disease 2019 (COVID-19) is a quarantinable communicable disease⁵ caused by the SARS-CoV-2 virus. As part of U.S. government efforts to mitigate the introduction, transmission, and spread of COVID-19, CDC issued the August Order,⁶ replacing a prior order issued on October 13, 2020 (October Order) which continued a series of orders issued pursuant to 42 U.S.C. 265, 268 and the implementing regulation at 42 CFR 71.40,⁷ suspending the right to

introduce⁸ certain persons into the United States from countries or places where the quarantinable communicable disease exists in order to protect the public health from an increased risk of the introduction of COVID-19.⁹ The August Order applied specifically to “covered noncitizens,” defined as “persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a POE or U.S. Border Patrol station¹⁰ at or near the U.S. land and adjacent coastal borders subject to certain exceptions detailed below; this includes noncitizens who do not have proper travel documents, noncitizens whose entry is otherwise contrary to law, and noncitizens who are apprehended at or near the border seeking to unlawfully enter the United States between POE.”¹¹

Three groups typically make up covered noncitizens—single adults (SA),¹² individuals in family units (FMU),¹³ and unaccompanied noncitizen children (UC).¹⁴ UC were specifically excepted from the August Order¹⁵ based on its explicit incorporation by reference of CDC’s July Exception of UC.¹⁶ On March 11, 2022, CDC fully terminated the August Order and all previous orders issued under 42 U.S.C. 265, 268 and 42 CFR 71.40 with respect to UC. This termination with respect to UC was based on a thorough determination of the current status of

the COVID-19 pandemic as well as an analysis of the specific care available to UC¹⁷ and the absence of legitimate countervailing reliance interests, and was prioritized ahead of CDC’s reassessment for SA and FMU in light of the entry of a preliminary injunction by the U.S. District Court for the Northern District of Texas that was to go into effect on March 11, 2022, enjoining CDC from excepting UC from the August Order based solely on their status as UC.¹⁸

The CDC Orders issued under 42 U.S.C. 265, 268 and 42 CFR 71.40 were intended to reduce the risk of COVID-19 introduction, transmission, and spread at POE and U.S. Border Patrol stations by significantly reducing the number and density of covered noncitizens held in these congregate settings, thereby reducing risks to U.S. citizens, U.S. nationals, lawful permanent residents, DHS and U.S. Customs and Border Protection (CBP) personnel and noncitizens at the facilities, and local healthcare systems. The measures included in the CDC Orders were deemed necessary for the protection of public health.

In the August Order, CDC committed to reassessing the public health circumstances necessitating the Order at least every 60 days by reviewing the latest information regarding the status of the COVID-19 public health emergency and associated public health risks, including migration patterns, sanitation concerns, and any improvement or deterioration of conditions at the U.S. borders.¹⁹ CDC conducted its most recent reassessment on January 28, 2022; in addition, a reassessment specific to UC was completed on March 11, 2022. The instant Public Health Determination and Termination considers the current status of the

⁵ Quarantinable communicable diseases are any of the communicable diseases listed in Executive Order 13295, as provided under 361 of the Public Health Service Act (42 U.S.C. 264), 42 CFR 71.1. The list of quarantinable communicable diseases currently includes cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named), severe acute respiratory syndromes (including Middle East Respiratory Syndrome and COVID-19), influenza caused by novel or reemerging influenza viruses that are causing, or have the potential to cause, a pandemic, and measles. *See* Exec. Order 13295, 68 FR 17255 (Apr. 4, 2003), as amended by Exec. Order 13375, 70 FR 17299 (Apr. 1, 2005) and Exec. Order 13674, 79 FR 45671 (July 31, 2014), 86 FR 52591 (Sep. 22, 2021).

⁶ *See supra* note 1.

⁷ Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, 85 FR 65806 (Oct. 16, 2020). The October Order replaced the Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, issued on March 20, 2020 (March Order), which was subsequently extended and amended. Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 FR 17060 (Mar. 26, 2020); Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists,

85 FR 22424 (Apr. 22, 2020); Amendment and Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 FR 31503 (May 26, 2020).

⁸ *Suspension of the right to introduce* means to cause the temporary cessation of the effect of any law, rule, decree, or order pursuant to which a person might otherwise have the right to be introduced or seek introduction into the United States. 42 CFR 71.40(b)(5).

⁹ *See supra* note 2.

¹⁰ POE and U.S. Border Patrol stations are operated by U.S. Customs and Border Protection (CBP), an agency within Department of Homeland Security (DHS).

¹¹ 86 FR 42828, 42841.

¹² A single adult (SA) is any noncitizen adult 18 years or older who is not an individual in a “family unit.” 86 FR 42828, 42830 at note 13.

¹³ An individual in a family unit (FMU) includes any individual in a group of two or more noncitizens consisting of a minor or minors accompanied by their adult parent(s) or legal guardian(s). *Id.* at note 14.

¹⁴ CDC understands UC to be a class of individuals similar to or the same as those individuals who would be considered “unaccompanied alien children” (*see* 6 U.S.C. 279) for purposes of HHS Office of Refugee Resettlement custody, were DHS to make the necessary immigration determinations under Title 8 of the U.S. Code. 86 FR 38717, 38718 at note 4.

¹⁵ 86 FR 42828, 42829 at note 3.

¹⁶ *See supra* note 4.

¹⁷ While SA, FMU, and UC are all processed by U.S. Customs and Border Protection (CBP), a component of DHS, following that initial intake, UC are referred to HHS’ Office of Refugee Resettlement (ORR) for care. *See* 86 FR 42828, 42835–37 (describing the processing of noncitizen SA and FMU by DHS components, CBP and Immigration and Customs Enforcement (ICE), under both regular Title 8 immigration and under an order pursuant to 42 U.S.C. 265). At both the CBP and ORR stages, UC receive special attention. This care and the distinct immigration processing available to UC compared to SA and FMU provided the basis for the exception of UC in the July Exception and the August Order. *See* 86 FR 42828, 42835–37 (describing the processing of noncitizen SA and FMU by DHS components, CBP and ICE, under both regular Title 8 immigration and under an order pursuant to 42 U.S.C. 265); *see also* 87 FR 15243, 15246–47 (Mar. 17, 2022) (describing the different COVID-19 mitigation measures applied where UC are processed).

¹⁸ *Texas v. Biden*, No. 4:21-cv-0579-P, 2022 WL 658579, at *16–18 (N.D. Tex. Mar. 4, 2022).

¹⁹ 86 FR 42828, 42841.

pandemic, including the receding numbers of COVID-19 cases, hospitalizations, and deaths most recently related to the Omicron variant, and constitutes the reassessment concluding on March 30, 2022. This Determination and Termination also reflects the recent issuance of CDC's COVID-19 Community Levels framework.²⁰ Additionally, the National COVID-19 Preparedness Plan was recently updated to provide a roadmap to help the nation continue fighting COVID-19, while also allowing resumption of more normal routines.²¹

Based on the analysis below, the CDC Director finds that, pursuant to 42 U.S.C. 265 and 42 CFR 71.40, there is no longer a serious danger that the entry of covered noncitizens, as defined by the August Order, into the United States will result in the introduction, transmission, and spread of COVID-19 and that a suspension of the introduction of covered noncitizens is no longer required in the interest of public health. While the introduction, transmission, and spread of COVID-19 into the United States is likely to continue to some degree, the cross-border spread of COVID-19 due to covered noncitizens does not present the serious danger to public health that it once did, given the range of mitigation measures now available. CDC continues to stress the need for robust COVID-19 mitigation measures at the border, including vaccination and continued masking in congregate settings. CDC has determined that the extraordinary measure of an order under 42 U.S.C. 265 is no longer necessary, particularly in light of less burdensome measures that are now available to mitigate the introduction, transmission, and spread of COVID-19. Therefore, as described below, CDC is terminating the August Order and all related prior orders issued pursuant to 42 U.S.C. 265, 268 and 42 CFR 71.40. This Termination will be implemented on May 23, 2022, to enable DHS to implement appropriate COVID-19 protocols, such as scaling up a program to offer COVID-19 vaccinations to migrants, and prepare for full resumption of regular migration under Title 8 authorities.

²⁰ *COVID-19 Community Levels*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/science/community-levels.html> (updated Mar. 24, 2022); see *infra* I.B.1.

²¹ *National COVID-19 Preparedness Plan—March 2022*, available at <https://www.whitehouse.gov/wp-content/uploads/2022/03/NAT-COVID-19-PREPAREDNESS-PLAN.pdf> (last visited Mar. 30, 2022).

A. Evolution of the COVID-19 Pandemic and the U.S. Government Response

Since late 2019, SARS-CoV-2, the virus that causes COVID-19, has spread throughout the world, resulting in a pandemic. As of March 30, 2022, there have been over 480 million confirmed cases of COVID-19 globally, resulting in over six million deaths.²² The United States has reported over 79 million cases resulting in over 975,000 deaths due to the disease²³ and is currently averaging around 26,000 new cases of COVID-19 a day as of March 28, 2022.²⁴

The U.S. government response to the COVID-19 pandemic has focused on taking actions and providing guidance based on the best available scientific information. The United States has experienced five waves of the pandemic, each with its own unique epidemiologic characteristics.²⁵ As the waves of COVID-19 cases have surged and ebbed, so too have actions taken in response to the pandemic. Earlier phases of the pandemic required extraordinary actions by the U.S. government and society at large. However, epidemiologic data, scientific knowledge, and the availability of public health mitigation measures, vaccines, and therapeutics have permitted many of those early actions to be relaxed in favor of more nuanced, targeted, and narrowly tailored guidance that provides a less burdensome means of preventing and controlling the SARS-CoV-2 virus and COVID-19. Of note for this Determination are the multiple travel- and migration-related measures taken by the U.S. government in each phase.

1. First Wave—January to June 2020

SARS-CoV-2 was first identified as the cause of an outbreak of respiratory illness that began in Wuhan, Hubei Province, People's Republic of China.²⁶ The United States reported its first COVID-19 case on January 21, 2020,²⁷

²² *Coronavirus disease (COVID-19) pandemic*, World Health Organization, <https://covid19.who.int/> (last visited Mar. 30, 2022).

²³ *COVID Data Tracker*, Centers for Disease Control and Prevention, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited Mar. 30, 2022).

²⁴ See *Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory*, Centers for Disease Control and Prevention, https://covid.cdc.gov/covid-data-tracker/#trends_dailycases, noting a seven-day moving average of 26,190 cases on March 28, 2022.

²⁵ *Supra* note 21.

²⁶ Patel A, Jernigan DB. *Initial Public Health Response and Interim Clinical Guidance for the 2019 Novel Coronavirus Outbreak—United States, December 31, 2019–February 4, 2020*. *MMWR Morb Mortal Wkly Rep* 2020;69:140–146. DOI: <http://dx.doi.org/10.15585/mmwr.mm6905e1>.

²⁷ *Id.*

and the HHS Secretary declared COVID-19 a public health emergency on January 31, 2020.²⁸ Community transmission was detected in the United States in February 2020.²⁹ COVID-19 cases initially spread in a small number of U.S. metropolitan areas, most notably in New York City and surrounding areas.³⁰ The resulting first wave of the pandemic peaked in the United States on April 7, 2020, with two million cases (3% of cumulative cases) and over 127,000 deaths (13% of cumulative deaths).³¹ During this period, public health officials monitored the situation closely and began instituting community-level nonpharmaceutical interventions such as school closures and physical distancing, in addition to promoting respiratory and hand hygiene practices.³² Vaccines and approved therapeutics were not available during this time.³³

As public health officials learned more about the epidemiology of SARS-CoV-2, the U.S. government, state and local health departments, and other partners implemented aggressive measures to slow transmission of the virus in the United States.³⁴ Many of the mitigation actions taken by the U.S. government during this wave involved travel and migration. The President issued a series of actions limiting entry into the United States, including proclamations suspending entry into the country of immigrants or nonimmigrants who were physically present within certain countries during the 14-day period preceding their entry

²⁸ *Determination that a Public Health Emergency Exists*, U.S. Department of Health and Human Services (Jan. 31, 2020), <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx> (last visited Mar. 30, 2022).

²⁹ *Geographic Differences in COVID-19 Cases, Deaths, and Incidence—United States, February 12–April 7, 2020*. *MMWR Morb Mortal Wkly Rep* 2020;69:465–471. DOI: <http://dx.doi.org/10.15585/mmwr.mm6915e4>.

³⁰ *Id.*

³¹ *Case notifications from state, local and territorial public health jurisdictions*, Centers for Disease Control and Prevention, <https://data.cdc.gov/Case-Surveillance/COVID-19-Case-Surveillance-Public-Use-Data/vbim-akqf>, (last accessed Mar. 30, 2022); *Provisional COVID-19 Death Counts by Week Ending Date and State*, Centers for Disease Control and Prevention, <https://data.cdc.gov/NCHS/Provisional-COVID-19-Death-Counts-by-Week-Ending-D/r8kw-7aab> (last accessed Mar. 30, 2022); *COVID-19 Reported Patient Impact and Hospital Capacity by State Timeseries*, Unified Hospital Analytic, <https://healthdata.gov/Hospital/COVID-19-Reported-Patient-Impact-and-Hospital-Capa/g62h-syeh> (last accessed Mar. 30, 2022).

³² Jernigan DB. *Update: Public Health Response to the Coronavirus Disease 2019 Outbreak—United States, February 24, 2020*. *MMWR Morb Mortal Wkly Rep* 2020;69:216–219. DOI: <http://dx.doi.org/10.15585/mmwr.mm6908e1>.

³³ *Id.*

³⁴ See *supra* note 26.

or attempted entry,³⁵ and Canada and Mexico joined the United States in temporarily restricting travelers across land borders for non-essential purposes.³⁶ CDC began screening travelers from certain countries at airports and issued several travel health notices³⁷ and, following a series of COVID-19 outbreaks on cruise ships, issued a No Sail Order and Suspension of Further Embarkation.³⁸

It was in the context of this initial wave of the pandemic and travel- and migration-related actions that the CDC Director promulgated an interim final rule at 42 CFR 71.40 implementing his authority under 42 U.S.C. 265, 268³⁹ and issued an Order under the interim final rule suspending the introduction of certain “covered aliens” on March 20, 2020 (March Order).⁴⁰ The March Order sought to avert the serious danger of the introduction of COVID-19 into the land POEs and Border Patrol stations at or near the United States borders with Canada and Mexico due to encountered noncitizens otherwise being held in the common areas of the facilities and in close proximity to one another as they undergo immigration processing. The March Order applied to SA, FMU, and UC and was subsequently amended and extended in April and May 2020.⁴¹

2. Second Wave—June to August 2020

During the second wave of the pandemic, from approximately June to August 2020, COVID-19 spread geographically throughout the United States.⁴² Case numbers peaked on July

14, 2020, and in total the second wave resulted in approximately 2.6 million COVID-19 cases (4% of cumulative cases) and over 75,000 deaths (4% of cumulative deaths). During the second wave, public health officials and scientists learned more about COVID-19 transmission, including asymptomatic transmission,⁴³ particularly in congregate, high-density settings, such as meat-packing plants and correctional facilities.⁴⁴ The medical community learned more about potential effects of COVID-19 on specific populations, such as pregnant people,⁴⁵ the elderly, and immunocompromised people. In July 2020, CDC announced that cloth face coverings (masks) are a critical public health tool in reducing the spread of COVID-19, particularly when used universally within communities.⁴⁶ As stay-at-home orders issued during the first wave were lifted, CDC continued to promote broad implementation of masking and face covering requirements.⁴⁷ One pivotal marker of the second wave was the creation of

MMWR Morb Mortal Wkly Rep 2020;69:1127–1132. DOI: <http://dx.doi.org/10.15585/mmwr.mm6933e2>.

⁴³ Payne DC, Smith-Jeffcoat SE, Nowak G, et al. *SARS-CoV-2 Infections and Serologic Responses from a Sample of U.S. Navy Service Members—USS Theodore Roosevelt, April 2020*. MMWR Morb Mortal Wkly Rep 2020;69:714–721. DOI: <http://dx.doi.org/10.15585/mmwr.mm6923e4>.

⁴⁴ Dyal JW, Grant MP, Broadwater K, et al. *COVID-19 Among Workers in Meat and Poultry Processing Facilities—19 States, April 2020*. MMWR Morb Mortal Wkly Rep 2020;69:557–561. DOI: <http://dx.doi.org/10.15585/mmwr.mm6918e3>; see also Hagan LM, Williams SP, Spaulding AC, et al. *Mass Testing for SARS-CoV-2 in 16 Prisons and Jails—Six Jurisdictions, United States, April–May 2020*. MMWR Morb Mortal Wkly Rep 2020;69:1139–1143. DOI: <http://dx.doi.org/10.15585/mmwr.mm6933a3>; Njuguna H, Wallace M, Simonson S, et al. *Serial Laboratory Testing for SARS-CoV-2 Infection Among Incarcerated and Detained Persons in a Correctional and Detention Facility—Louisiana, April–May 2020*. MMWR Morb Mortal Wkly Rep 2020;69:836–840. DOI: <http://dx.doi.org/10.15585/mmwr.mm6926e2>.

⁴⁵ Ellington S, Strid P, Tong VT, et al. *Characteristics of Women of Reproductive Age with Laboratory-Confirmed SARS-CoV-2 Infection by Pregnancy Status—United States, January 22–June 7, 2020*. MMWR Morb Mortal Wkly Rep 2020;69:769–775. DOI: <http://dx.doi.org/10.15585/mmwr.mm6925a1>.

⁴⁶ CDC calls on Americans to wear masks to prevent COVID-19 spread (press release), Centers for Disease Control and Prevention, <https://www.cdc.gov/media/releases/2020/p0714-americans-to-wear-masks.html> (Jul. 14, 2020) (noting the growing body of evidence supporting cloth face coverings as a source control to help prevent the person wearing the mask from spreading COVID-19 to others; the main protection individuals gain from masking occurs when others in their communities also wear face coverings).

⁴⁷ Hendrix MJ, Walde C, Findley K, Trotman R. *Absence of Apparent Transmission of SARS-CoV-2 from Two Stylists After Exposure at a Hair Salon with a Universal Face Covering Policy—Springfield, Missouri, May 2020*. MMWR Morb Mortal Wkly Rep 2020;69:930–932. DOI: <http://dx.doi.org/10.15585/mmwr.mm6928e2>.

Operation Warp Speed, a partnership between the HHS and Department of Defense (DOD) aimed to help accelerate the development of a COVID-19 vaccine.⁴⁸

As concerns about asymptomatic transmission grew and vaccines and therapeutics were still being developed, the U.S. government continued to take steps to protect the public health. CDC extended the No Sail Order and Suspension of Further Embarkation for cruise ships⁴⁹ and, as the second wave was being replaced by the third, issued an Order temporarily halting evictions in the United States due to the potential for accelerated transmission in congregate settings such as shelters for displaced persons.⁵⁰ The CDC Order under 42 U.S.C. 265, 268 and 42 CFR 71.40 issued in March 2020 and amended and extended in April and May 2020, continued to be in place throughout this period.

3. Third Wave—Alpha Variant—September 2020 to May 2021

COVID-19 variants, including the B.1.1.7 (Alpha) variant, emerged in the fall of 2020, heralding the third wave of the pandemic⁵¹ and resulting in 22.5 million COVID-19 cases (34% of cumulative cases) and over 398,000 deaths (21% of cumulative deaths) in the United States.⁵² The third wave lasted from approximately September 2020 to May 2021 and coincided with the initial availability of vaccines for COVID-19⁵³ and increased availability

⁴⁸ *Operation Warp Speed: Accelerated COVID-19 Vaccine Development Status and Efforts to Address Manufacturing Challenges*, Government Accountability Office, <https://www.gao.gov/products/gao-21-319> (Feb. 11, 2021).

⁴⁹ See 85 FR 44085 (July 21, 2020).

⁵⁰ See 85 FR 55292 (Sept. 4, 2020). The CDC Director subsequently renewed the “eviction moratorium” Order until March 31, 2021 (86 FR 8020 (Feb. 3, 2021)), then modified and extended the Order until June 30, 2021 (86 FR 16731 (Mar. 31, 2021)) and extended the Order until July 31, 2021 (86 FR 34010 (Jun. 28, 2021)). On August 3, 2021, the CDC Director announced a new Order to temporarily halt residential evictions in communities with substantial or high transmission of COVID-19 to prevent the further spread of COVID-19 (86 FR 43244 (Aug. 6, 2021)).

⁵¹ *Science Brief: Emerging SARS-CoV-2 Variants—Updated*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/scientific-brief-emerging-variants.html> (updated Jan. 28, 2021).

⁵² Per internal CDC calculations.

⁵³ COVID-19 vaccines were initially available only for those persons with higher risk of COVID-19, such as immunocompromised individuals and healthcare workers, but access was subsequently expanded to the general population aged 16 years and older. The U.S. Food and Drug Administration (FDA) issued emergency use authorizations for three COVID-19 vaccines: Two mRNA vaccines (produced by Pfizer-BioNTech and Moderna) and one viral vector vaccine (produced by Johnson &

Continued

³⁵ See Proclamation 9984 (Jan. 31, 2020), 85 FR 6709 (Feb. 5, 2020) (regarding the People’s Republic of China); Proclamation 9992 (Feb. 28, 2020), 85 FR 12855 (Mar. 4, 2020) (regarding the Republic of Iran); Proclamation 9993 (Mar. 11, 2020), 85 FR 15045 (Mar. 16, 2020) (regarding the Schengen Area of Europe); Proclamation 9996 (Mar. 14, 2020), 85 FR 15341 (Mar. 18, 2020) (regarding the United Kingdom and Republic of Ireland); and Proclamation 10041, as amended by Proclamation 10042 (May 24, 2020), 85 FR 31933 (May 28, 2020) (regarding the Federative Republic of Brazil).

³⁶ See 85 FR 16547 (Mar. 24, 2020); 85 FR 16548 (Mar. 24, 2020).

³⁷ *Supra* note 32; see also *CDC Advises Travelers to Avoid All Nonessential Travel to China*, Centers for Disease Control and Prevention, <https://www.cdc.gov/media/releases/2020/s0128-travelers-avoid-china.html> (Jan. 28, 2020), advising travelers to avoid all nonessential travel to countries with known viral spread.

³⁸ 85 FR 16628 (Mar. 24, 2020); extended 85 FR 21004 (Apr. 15, 2020); see also Moriarty LF, Plucinski MM, Marston BJ, et al. *Public Health Responses to COVID-19 Outbreaks on Cruise Ships—Worldwide, February–March 2020*. MMWR Morb Mortal Wkly Rep 2020;69:347–352. DOI: <http://dx.doi.org/10.15585/mmwr.mm6912e3>.

³⁹ See 85 FR 16559 (Mar. 24, 2020).

⁴⁰ See 85 FR 17060 (Mar. 26, 2020).

⁴¹ See *supra* note 7.

⁴² Oster AM, Kang GJ, Cha AE, et al. *Trends in Number and Distribution of COVID-19 Hotspot Counties—United States, March 8–July 15, 2020*.

of therapeutics.⁵⁴ Even as the third wave began to ebb, however, a new variant—B.1.617.2 (Delta)—began circulating in India and other countries.

The U.S. government responded to the Alpha variant and resulting surge in cases with additional travel- and migration-related restrictions, beginning with a requirement for air passengers from the United Kingdom (where the Alpha variant was first identified) to present a negative COVID-19 test result before boarding a flight to the United States;⁵⁵ CDC subsequently expanded the predeparture testing requirement to air passengers departing to the United States from any foreign country.⁵⁶ Due to the inherent risk of transmission of COVID-19 in the travel context,⁵⁷ CDC

Johnson/Janssen); see generally <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization#coviddrugs>; Dooling K, McClung N, Chamberland M, et al. *The Advisory Committee on Immunization Practices' Interim Recommendation for Allocating Initial Supplies of COVID-19 Vaccine—United States*, 2020. *MMWR Morb Mortal Wkly Rep* 2020;69:1857–1859. DOI: <http://dx.doi.org/10.15585/mmwr.mm6949e1>. In May 2021, adolescents 12 to 15 years old became eligible to receive COVID-19 vaccines. Wallace M, Woodworth KR, Gargano JW, et al. *The Advisory Committee on Immunization Practices' Interim Recommendation for Use of Pfizer-BioNTech COVID-19 Vaccine in Adolescents Aged 12–15 Years—United States, May 2021*. *MMWR Morb Mortal Wkly Rep* 2021;70:749–752. DOI: <http://dx.doi.org/10.15585/mmwr.mm7020e1>.

⁵⁴ U.S. Food and Drug Administration, *Emergency Use Authorization*, <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization#coviddrugs> (last accessed Mar. 30, 2022).

⁵⁵ *CDC to Require Negative COVID-19 Test for Air Travelers from the United Kingdom to the U.S.*, Centers for Disease Control and Prevention, <https://www.cdc.gov/media/releases/2020/s1224-CDC-to-require-negative-test.html> (Dec. 24, 2020).

⁵⁶ See 86 FR 7387 (Jan. 26, 2021).

⁵⁷ CDC has issued orders and guidance focusing on the “travel context,” which encompasses both conveyances and transportation hubs, because these are locations where large numbers of people may gather and physical distancing can be difficult. Furthermore, many people need to take public transportation for their livelihoods. Passengers (including young children) may be unvaccinated and some on board, including personnel operating the conveyances or working at the transportation hub, may have underlying health conditions that cause them to be at increased risk of severe illness (*i.e.*, those who might not be protected by vaccination because of weakened immune systems). Such people may not have the option to disembark or relocate to another area of the conveyance. Transportation hubs are also places where people depart to different geographic locations, both across the United States and around the world. Therefore, an exposure in a transportation hub can have consequences to many destination communities if people become infected after they travel. See *Requirement for Face Masks on Public Transportation Conveyances and at Transportation Hubs*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/face-masks-public-transportation.html> (updated Feb. 25, 2022).

also issued an Order requiring face masks to be worn while on conveyances traveling into, within, or out of the United States and at U.S. transportation hubs.⁵⁸ Based on developments with respect to variants and the continued spread of COVID-19, the U.S. government expanded the list of countries from which entry into the United States was limited.⁵⁹ CDC also announced a Conditional Sailing Order framework under which cruise ships could resume passenger operations only after meeting stringent public health mitigation measures, such as frequent testing of crew members.⁶⁰

In October 2020, following the promulgation of the Final Rule for 42 CFR 71.40,⁶¹ CDC published a new Order under 42 U.S.C. 265 and 268 and the regulation suspending the right to introduce certain covered persons into the United States.⁶² As with all prior CDC Orders, the October Order applied to “covered aliens,” which included certain SA, FMU, and UC seeking entry into the United States without valid travel documents and provided certain exceptions, including a case-by-case exception to be applied by CBP officers with supervisor approval upon a determination that an individual should be exempted from application of the Order based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, humanitarian, and public health interests. The October Order was the subject of litigation regarding its application to both FMU and UC.⁶³

⁵⁸ *Id.*

⁵⁹ This included restrictions and suspension of entry of noncitizens (immigrants and nonimmigrants) who were present within the European Schengen Area, the United Kingdom (excluding overseas territories outside of Europe), the Republic of Ireland, the Federative Republic of Brazil, the Republic of South Africa, and the Republic of India in the 14-day period prior to attempted entry. See Proclamation 10143 (Jan. 25, 2021), 86 FR 7467 (Jan. 28, 2021) (regarding the Schengen Area of Europe, the United Kingdom, the Republic of Ireland, the Federative Republic of Brazil, and the Republic of South Africa); Proclamation 10199 (Apr. 30, 2021), 86 FR 24297 (May 6, 2021) (regarding the Republic of India).

⁶⁰ See 86 FR 59720 (Oct. 28, 2021). The Order was extended in April, May, and October 2021.

⁶¹ See 85 FR 56424 (Sept. 11, 2020).

⁶² Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, 85 FR 65806 (Oct. 16, 2020).

⁶³ For example, on November 18, 2020, the United States District Court for the District of Columbia preliminarily enjoined the U.S. government from expelling UC pursuant to the October 2020 Order. *PJES v. Mayorkas*, No. 1:20-cv-02245 (D.D.C.), Dkt. Nos. 79–80. While prohibited from expelling UC, the U.S. government worked to create solutions for the appropriate care of UC pursuant to regular immigration authorities.

4. Fourth Wave—Delta Variant—June to October 2021

The COVID-19 pandemic’s fourth wave lasted from June to October 2021 and was characterized by the spread of the Delta variant in the United States; during this period the United States experienced 9.8 million cases (15% of cumulative cases) and over 179,000 deaths (9% of cumulative deaths).⁶⁴ Vaccines were widely available during the fourth wave and uptake rose slightly throughout this period.⁶⁵

Given the predictable global spread of the virus, the effectiveness of COVID-19 vaccines, and the rising availability of COVID-19 vaccines globally, and recognizing the need to allow the domestic and global economy to continue recovering from the effects of the pandemic, the President issued a Proclamation reflecting the United States’ desire to move away from the country-by-country restrictions previously applied during the COVID-19 pandemic and to adopt an air travel policy that relies primarily on vaccination to advance the safe resumption of international air travel to the United States.⁶⁶ The Proclamation was followed by a suite of travel-related mitigation measures.⁶⁷ Even as available

On Friday, January 29, 2021, the United States Court of Appeals for the District of Columbia Circuit granted a stay pending appeal of the District Court’s preliminary injunction (*PJES v. Mayorkas*, No. 20–5357, Doc. No. 1882899), thereby permitting CDC and DHS to resume enforcement of the October Order and immediately expel UC. On January 30, 2021, CDC exercised its discretion to temporarily exempt UC from expulsion pending the outcome of its public health reassessment of the October Order. See 86 FR 9942 (Feb. 17, 2021).

⁶⁴ Per internal CDC calculations.

⁶⁵ *Trends in Number of COVID-19 Vaccinations in the US*, Centers for Disease Control and Prevention, <https://covid.cdc.gov/covid-data-tracker/#vaccination-trends> (last updated Mar. 29, 2022).

⁶⁶ See Proclamation 10294 (Oct. 25, 2021), 86 FR 59603 (Oct. 28, 2021) (terminating the suspension of entry into the United States regarding the People’s Republic of China, the Republic of Iran, the Schengen Area of Europe, the United Kingdom and Republic of Ireland, the Federative Republic of Brazil, the Republic of South Africa, and the Republic of India).

⁶⁷ Including amending the *Requirement for Proof of Negative COVID-19 Test or Recovery from COVID-19 for All Air Passengers Arriving in the United States* (<https://www.cdc.gov/quarantine/fr-proof-negative-test.html>) to shorten the time window for predeparture testing to one day for air passengers who were not fully vaccinated against COVID-19; *Order Requiring Airlines to Collect Contact Information for All Passengers Arriving into the United States* (<https://www.cdc.gov/quarantine/order-collect-contact-info.html>), and the *Order Implementing Presidential Proclamation on Safe Resumption of Global Travel During the COVID-19 Pandemic*, which required all non-U.S.-citizen, non-immigrants, with limited exceptions, traveling to the United States by air to be fully vaccinated against COVID-19 and show proof of vaccination (<https://www.cdc.gov/quarantine/order-safe-travel.html>).

mitigation measures allowed the U.S. government to shift its pandemic approach in the travel context, the country continued to see a surge in COVID-19 cases caused by the Delta variant necessitating different measures in non-travel contexts. For example, as a result, the CDC Director extended the aforementioned eviction moratorium⁶⁸ for persons in counties experiencing substantial or high rates of transmission.⁶⁹

During the fourth wave, CDC also issued the July Exception excepting UC from the October 2020 Order, which followed CDC's decision in January 2021 to temporarily except UC from expulsion pending a public health reassessment of the October Order.⁷⁰ The October 2020 Order was subsequently replaced by the August Order under 42 U.S.C. 265 and 268 and 42 CFR 71.40, which fully incorporated the July Exception. The August Order explained why the mitigation measures specific to UC and discussed in the July Exception were not available to SA and FMU and, thus, why the August Order applied only to SA and FMU.⁷¹ As with many of the other actions taken by the U.S. government during this wave, the August Order was predicated, in part, on the significant increase in community transmission levels brought forth by the Delta variant.

5. Fifth Wave—Omicron Variant—November 2021 to March 2022

The highly infectious SARS-CoV-2 variant B.1.1.529 (Omicron) is responsible for the currently receding fifth wave of the pandemic. The fifth wave resulted in an extraordinary and unparalleled increase in COVID-19 cases around the world.⁷² Although the emergence of the Omicron variant resulted in the highest reported numbers of cases and hospitalizations during the pandemic, disease severity indicators, including hospital length of stay, intensive care unit admissions, and deaths, remained lower than during

previous pandemic waves.⁷³ As a result of the Omicron surge, the United States experienced almost 24 million cases (36% of cumulative cases); given this volume of cases, however, the resulting number of deaths in the United States (163,000 deaths, or 9% of cumulative deaths) was comparatively small.⁷⁴ Vaccination efforts continued across the country during this fifth wave and were expanded to include children aged 5 to 11 years.⁷⁵ Despite breakthrough cases due to Omicron, vaccines continued to provide substantial protection against severe illness, hospitalizations, and deaths due to COVID-19.⁷⁶

Although the COVID-19 public health emergency continues,⁷⁷ scientific understanding about the epidemiology of COVID-19 and its variants as well as the effectiveness of pharmaceuticals and nonpharmaceutical interventions have substantially expanded, allowing the U.S. government and CDC to transition to a more narrowly tailored set of tools to prevent and control the spread of the SARS-CoV-2 virus and COVID-19. The U.S. government continues to pivot away from country-specific measures. Following the temporary issuance of country-based restrictions as Omicron emerged,⁷⁸ all country-based restrictions were later lifted by the

President, as recommended by CDC.⁷⁹ Based on an increasing body of evidence, CDC recommended that everyone be vaccinated and remain up to date with vaccines, including boosters for those eligible.⁸⁰ As more information about the Omicron variant and vaccine effectiveness became available, CDC calibrated its mitigation measures in accordance with the epidemiology of the virus and the different characteristics of the predominant variants. This included shortening the recommended duration of quarantine and isolation for most members of the general public in community settings⁸¹ and also shortening the timeframe for its COVID-19 testing requirements for all air passengers boarding flights to the United States.⁸² DHS also required that all inbound non-citizen, non-lawful permanent residents traveling to the United States via land POE—whether for essential or non-essential reasons—must provide proof of full COVID-19 vaccination status upon request.⁸³ These refinements in policy reflect CDC's increased understanding of the science and its desire to tailor mitigation measures so that they are no more burdensome than necessary. The ability of CDC to be responsive to the public health landscape and adjust such

⁷³ Iuliano AD, Brunkard JM, Boehmer TK, et al. *Trends in Disease Severity and Health Care Utilization During the Early Omicron Variant Period Compared with Previous SARS-CoV-2 High Transmission Periods—United States, December 2020–January 2022*. MMWR Morb Mortal Wkly Rep. ePub: 25 January 2022. DOI: <http://dx.doi.org/10.15585/mmwr.mm7104e4>; see also *supra* note 26.

⁷⁴ Per internal CDC calculations.

⁷⁵ Woodworth KR, Moulia D, Collins JP, et al. *The Advisory Committee on Immunization Practices' Interim Recommendation for Use of Pfizer-BioNTech COVID-19 Vaccine in Children Aged 5–11 Years—United States, November 2021*. MMWR Morb Mortal Wkly Rep 2021;70:1579–1583. DOI: <http://dx.doi.org/10.15585/mmwr.mm7045e1>.

⁷⁶ *Omicron Variant: What You Need to Know*, Centers for Disease Control and Prevention. <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html> (updated Feb. 2, 2022). See also Tenforde MW, Self WH, Gaglani M, et al. *Effectiveness of mRNA Vaccination in Preventing COVID-19–Associated Invasive Mechanical Ventilation and Death—United States, March 2021–January 2022*. MMWR Morb Mortal Wkly Rep. ePub: 18 March 2022. DOI: <http://dx.doi.org/10.15585/mmwr.mm7112e1>.

⁷⁷ The public health emergency determination has been renewed by the Secretary of HHS at 90-day intervals since January 2020, most recently on January 14, 2022. See *Renewal of Determination That A Public Health Emergency Exists*, Office of the Assistant Secretary for Preparedness and Response. <https://aspr.hhs.gov/legal/PHE/Pages/COVID19-14Jan2022.aspx> (last visited Mar. 9, 2022).

⁷⁸ Those restrictions included suspending entry into the United States of immigrants or nonimmigrants who were physically present within eight southern African countries during the 14-day period preceding their entry or attempted entry into the United States. See Proclamation 10315 (Nov. 26, 2021), 86 FR 68385 (Dec. 1, 2021).

⁷⁹ See Proclamation 10329 (Dec. 28, 2021), 87 FR 149 (Jan. 3, 2022) (terminating Proclamation 10315 regarding eight southern African countries).

⁸⁰ A person is considered up to date after receiving all recommended COVID-19 vaccines, including any booster dose(s) when eligible. *Stay Up to Date with Your Vaccines*, Centers for Disease Control and Prevention. <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/stay-up-to-date.html> (issued Jan. 2022, updated Mar. 22, 2022).

⁸¹ *CDC Updates and Shortens Recommended Isolation and Quarantine Period for General Population*, Centers for Disease Control and Prevention. <https://www.cdc.gov/media/releases/2021/s1227-isolation-quarantine-guidance.html> (Dec. 27, 2021). Specifically, the length of isolation period for the general public was shortened to five days, followed by five days of wearing a well-fitting mask. See also *What We Know About Quarantine and Isolation*, Centers for Disease Control and Prevention. <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine-isolation-background.html> (updated Feb. 25, 2022).

⁸² *Requirement for Proof of Negative COVID-19 Test or Recovery from COVID-19 for All Air Passengers Arriving in the United States*, updating COVID-19 testing requirements (available at https://www.cdc.gov/quarantine/pdf/Amended-Global-Testing-Order_12-02-2021-p.pdf). All air passengers two years or older with a flight departing to the United States from a foreign country starting on December 6, 2021, are required show a negative COVID-19 viral test result taken no more than one day before travel, or documentation of having recovered from COVID-19 in the past 90 days, before they board their flight. This requirement remains in place.

⁸³ See 87 FR 3429 (Jan. 24, 2022) (applying restrictions to the U.S.-Canada border) and 87 FR 3425 (applying restrictions to the U.S.-Mexico border).

⁶⁸ See 85 FR 55292 (Sept. 4, 2020).

⁶⁹ See 86 FR 43244 (Aug. 6, 2021).

⁷⁰ See *supra* note 63.

⁷¹ 86 FR 42828, 42837–38.

⁷² Omicron was first reported to the World Health Organization (WHO) by South Africa on November 24, 2021; on November 26, 2021, WHO designated it a Variant of Concern (VOC). On November 30, 2021, the U.S. also decided to classify Omicron as a VOC. This decision was based on a number of factors, including detection of cases attributed to Omicron in multiple countries, even among persons without travel history, transmission and replacement of Delta as the predominant variant in South Africa, changes in the spike protein of the virus, and concerns about potential decreased effectiveness of vaccination and treatments.

measures up and down is critical to successfully fighting the pandemic.

During the fifth wave of the pandemic and as specified in the August Order, CDC reviewed the public health rationale underlying the need for the Order every 60 days. By the time of the second reassessment in late November 2021 the public health situation with respect to COVID-19 was improving. However, the sudden emergence of the Omicron variant led CDC to find that the August Order continued to be necessary. Because case numbers remained historically high in January, CDC's third public health reassessment determined that the need for the August Order remained.

B. Current Status of the COVID-19 Pandemic

As a result of the Omicron variant, the United States recorded its highest seven-day moving average number of cases on January 15, 2022.⁸⁴ Following this unprecedented peak, however, the number of COVID-19 cases in the United States began to rapidly decrease, falling by over 95% as of March 30, 2022.⁸⁵ After a brief period of continued increases,⁸⁶ deaths and hospitalizations also reversed course and began a swift descent.⁸⁷ Even at their peaks, however, the number of deaths and hospitalizations during Omicron were substantially lower than would have been expected from previous waves, based on the case counts. These welcomed changes were due, in part, to widespread population immunity⁸⁸ and

a generally lower overall risk of severe disease due to the nature of the Omicron variant.

As the overall COVID-19 case count decreases, CDC has observed an increased percentage of cases due to a newly detected subvariant of Omicron, BA.2. As of March 24, 2022, the BA.2 subvariant is estimated to represent approximately 54.9% of sequenced cases in the United States.⁸⁹ Experts do not expect this subvariant to lead to a large surge in cases or hospitalizations, due in part to the levels of immunity provided by other Omicron subvariants (B.1.1.529 and BA.1.1) and by vaccination. Should COVID-19 cases show signs of potentially straining the U.S. healthcare system in the future, CDC's Community COVID-19 Levels framework described below better equips the country to swiftly respond.

As the waves of the pandemic have surged and ebbed, so too have actions the U.S. government has taken in response to the pandemic. While earlier phases of the pandemic required extraordinary actions by the government and society at large, epidemiologic data, scientific knowledge, and the availability of public health mitigation measures, vaccines, and therapeutics have permitted the country to safely transition to more normal routines.⁹⁰ As part of that transition, CDC is also shifting to more nuanced and narrowly tailored guidance that provides a less burdensome means of preventing and controlling the SARS-CoV-2 virus and COVID-19.

1. Community COVID-19 Levels

During the first four waves of the pandemic, CDC relied on a formula to calculate community transmission levels and update COVID-19 prevention

Recommendations, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/indicators-monitoring-community-levels.html> (updated Mar. 4, 2022); *Nationwide COVID-19 Infection- and Vaccination-Induced Antibody Seroprevalence (Blood donations)*, Centers for Disease Control and Prevention, <https://covid.cdc.gov/covid-data-tracker/#nationwide-blood-donor-seroprevalence> (last updated Feb. 18, 2022).

⁸⁹ *Variant Proportions*, Centers for Disease Control and Prevention, <https://covid.cdc.gov/covid-data-tracker/#variant-proportions> (showing data for the week ending March 26, 2022).

⁹⁰ *Transcript for CDC Media Telebriefing: Update on COVID-19*, Centers for Disease Control and Prevention, <https://www.cdc.gov/media/releases/2022/t0225-covid-19-update.html> (Feb. 25, 2022). COVID-19 vaccines are highly effective against severe illness and death. Widespread uptake of these vaccines, coupled with higher rates of infection-induced immunity at the population level, as well as the broad availability of mitigation measures and effective therapeutics have moved the pandemic to a different phase. See also *State of the Union Address*, <https://www.whitehouse.gov/state-of-the-union-2022/> (Mar. 1, 2022).

strategies.⁹¹ These indicators reflected the goal of limiting transmission as vaccine availability increased.⁹² The CDC Director examined these indicators in conducting the public health assessment for the August Order.⁹³

The COVID-19 pandemic has shifted to a new phase, however, due to the widespread uptake of highly effective COVID-19 vaccines, the accrual of high rates of vaccine- and infection-induced immunity at the population level, and the availability of effective therapeutics, testing, and masks or respirators.⁹⁴ As a result, CDC released a new framework in February 2022, "COVID-19 Community Levels," reflecting a shift in focus from eliminating SARS-CoV-2 transmission toward disease control and healthcare system protection.⁹⁵ This new framework examines three currently relevant metrics for each U.S. county: New COVID-19 hospital admissions per 100,000 population in the past seven days, the percent of staffed inpatient beds occupied by patients with COVID-19, and total new COVID-19 cases per 100,000 population in the past seven days.⁹⁶ CDC determined that data on disease severity and healthcare system strain complement case rates, and that these data together are more informative for

⁹¹ In September 2020, CDC released the Indicators of Community Transmission framework, which incorporated two metrics to define community transmission: Total new cases per 100,000 persons in the past seven days, and percentage of Nucleic Acid Amplification Test results that are positive during the past seven days. CDC also encouraged local decision-makers to also assess the following factors, in addition to levels of SARS-CoV-2, to inform the need for layered prevention strategies across a range of settings: Health system capacity, vaccination coverage, capacity for early detection of increases in COVID-19 cases, and populations at risk for severe outcomes from COVID-19. See Christie A, Brooks JT, Hicks LA, et al. *Guidance for Implementing COVID-19 Prevention Strategies in the Context of Varying Community Transmission Levels and Vaccination Coverage*. MMWR Morb Mortal Wkly Rep. ePub: 27 July 2021. DOI: <http://dx.doi.org/10.15585/mmwr.mm7030e2>.

⁹² *Id.*

⁹³ *Supra* note 1.

⁹⁴ *Supra* note 88.

⁹⁵ *Indicators for Monitoring COVID-19 Community Levels and Implementing Prevention Strategies*, Centers for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/downloads/science/Scientific-Rationale-summary_COVID-19-Community-Levels_2022.02.23.pptx (Feb. 23, 2022).

⁹⁶ New COVID-19 admissions and the percent of staffed inpatient beds occupied represent the current potential for strain on the health system, while data on new cases acts as an early warning indicator of potential increases in health system strain in the event of a COVID-19 surge. Community vaccination coverage and other local information, like early alerts from surveillance, such as through wastewater or the number of emergency department visits for COVID-19, when available, can also inform decision making for health officials and individuals. *Supra* note 20.

⁸⁴ See *supra* note 24, citing a seven-day moving average of 806,324 cases on January 15, 2022 (last updated Mar. 29, 2022).

⁸⁵ *Id.* (noting a peak of 806,324 seven-day moving average number of cases to 26,190 seven-day moving average number of cases on March 29, 2022).

⁸⁶ *COVID Data Tracker Weekly Review: Stay Up to Date—Interpretive Summary for Jan. 28, 2022*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/past-reports/01282022.html> (Jan. 28, 2022).

⁸⁷ See *New Admissions of Patients with Confirmed COVID-19, United States*, Centers for Disease Control and Prevention, <https://covid.cdc.gov/covid-data-tracker/#new-hospital-admissions> (last updated Mar. 28, 2022); see also *supra* note 24, noting a peak of 4,172 seven-day moving average number of deaths declining to 644 seven-day moving average number of deaths on March 29, 2022.

⁸⁸ In addition to vaccine-induced immunity, studies have consistently shown that infection with SARS-CoV-2 lowers an individual's risk of subsequent infection and an even lower risk of hospitalization and death. National estimates of both vaccine- and infection-induced antibody seroprevalence have been measured among blood donors; as of December 2021, these measures demonstrated 94.7% of persons 16 years and older showed antibody seroprevalence for COVID-19. *Science Brief: Indicators for Monitoring COVID-19 Community Levels and Making Public Health*

public health recommendations for individual, organizational, and jurisdictional decisions than data on community transmission rates alone.⁹⁷ This comprehensive approach to assessing COVID-19 Community Levels can inform decisions about layered COVID-19 prevention strategies, including testing and masking to reduce medically significant disease and limit strain on the healthcare system and other societal functions.⁹⁸

Using these data, the COVID-19 Community Levels for each county are classified as low, medium, or high. CDC recommends using county COVID-19 Community Levels to help determine which mitigation measures should be implemented within a community.⁹⁹ As of March 31, 2022, 94.9% of U.S. counties are classified at the low COVID-19 Community Level, 4.5% of U.S. counties are classified at the medium COVID-19 Community Level; only 0.5% of U.S. counties are classified at the high COVID-19 Community Level.¹⁰⁰ Furthermore, 97.1% of the U.S. population lives in counties classified as “low,” 2.5% live in counties classified as “medium,” and 0.4% live in counties classified as “high.”¹⁰¹

2. Healthcare Systems and Resources

With the ebb of the fifth wave, the number of new hospital admissions of patients with confirmed COVID-19 has similarly receded. Daily new hospitalization admissions peaked with 154,696 daily new admissions on January 15, 2022. The large number of cases in a very short time led to a high volume of hospitalizations that strained some local healthcare systems and, in some instances, impacted care for non-COVID-19-related concerns.¹⁰² Despite this high volume of COVID-19 cases and hospitalizations, COVID-19 cases caused by the Omicron variant were, on average, less severe.¹⁰³

The observed reduction in severity of COVID-19 cases and ongoing effective use of pharmaceutical interventions make it possible to minimize medically significant disease and prevent excessive strain on the healthcare sector, even with the occurrence of

SARS-CoV-2 transmission.¹⁰⁴ Accordingly, at this stage of the pandemic, data on disease severity and healthcare system strain complement case rates and result in a more comprehensive approach to assessing COVID-19 Community Levels.

3. Mitigation Measures

Effective public health mitigation measures have contributed to the vast majority of the U.S. population living in a county identified by CDC as having either a “low” or “medium” COVID-19 Community Level. In addition to earlier public health measures, such as masking and physical distancing, the development and widespread deployment of COVID-19 tests, vaccines, and therapeutics have greatly reduced the transmission of the virus and severity of the disease throughout the United States and provided a new understanding of how prevention measures may be used to minimize the impact of COVID-19 on health and society.¹⁰⁵ These measures and the resulting current status of the COVID-19 pandemic are a major factor in CDC’s determination that the Orders issued under the authorities of 42 U.S.C. 265, 268 and 42 CFR 71.40 suspending the right to introduce certain persons into the United States are no longer necessary to protect the public health.

a. Test Availability

Testing continues to be an essential part of COVID-19 mitigation due to the potential for asymptomatic and pre-symptomatic transmission. Compared to earlier in the pandemic, COVID-19 tests are widely available in the United States. During January 2022, Americans had access to over 480 million at-home tests in addition to rapid point of care and laboratory tests.¹⁰⁶ With the additional testing capacity available through antigen tests, rapid testing can be implemented to identify infected persons for isolation and identification of close contacts for quarantine and testing if indicated.¹⁰⁷

¹⁰⁴ *Supra* note 88.

¹⁰⁵ See *COVID Data Tracker Weekly Review: Interpretive Summary for March 4, 2022*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/past-reports/03042022.html> (Mar. 4, 2022), indicating that the whole community can be safe only when [everyone] take[s] steps to protect each other, even when the COVID-19 Community Level is low or medium.

¹⁰⁶ Testing is available for free at 21,500 locations around the country. See *supra* note 21.

¹⁰⁷ See COVID-19 Testing and Diagnostics Working Group (TDWG). U.S. Department of Health and Human Services, <https://www.hhs.gov/coronavirus/testing/testing-diagnostics-working-group/index.html> (last visited Mar. 31, 2022) (defining the role of the COVID-19 TDWG, which

Testing is also particularly helpful in congregate settings, where testing facility residents and personnel can help facilitate early identification of increased infection rates and prompt mitigation actions to help avoid strain on facility operations.¹⁰⁸ CDC recommends broad use of COVID-19 tests among facility workforces and within the larger community; such workforce testing may decrease the necessity for testing residents in congregate settings.

b. Vaccines and Boosters

Since August 2021, the scientific community has made significant strides in the development and distribution of COVID-19 vaccines, including booster shots. When the August Order was issued, three COVID-19 vaccines were authorized by the U.S. Food and Drug Administration (FDA) for emergency use and recommended for all people 12 years of age and up. While the daily count of total COVID-19 vaccine doses administered across the United States has plateaued, the cumulative number of people protected by COVID-19 vaccination has grown since the August Order.¹⁰⁹ As of March 30, 2022, over 209 million people in the United States 12 years of age or older (73.9% of the population 12 years or older) have been fully vaccinated and over 245 million people in the United States 12 years or older (86.6%) have received at least one dose.¹¹⁰ To address concerns with potential waning immunity,¹¹¹ booster shots are now recommended for all

develops testing-related guidance and provides targeted investments to expand the available testing supply and maximize testing capacity).

¹⁰⁸ *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#Strategies> (updated Feb. 15, 2022).

¹⁰⁹ *Supra* note 65.

¹¹⁰ In comparison, as of July 28, 2021, over 163 million people in the United States (57.6% of the population 12 years or older) had been fully vaccinated and over 189 million people in the United States (66.8% of the population 12 years or older) had received at least one dose. *Id.*; see also *COVID-19 Vaccinations in the United States*, Centers for Disease Control and Prevention, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last updated Mar. 30, 2022).

¹¹¹ Thompson MG, Natarajan K, Irving SA, et al. *Effectiveness of a Third Dose of mRNA Vaccines Against COVID-19—Associated Emergency Department and Urgent Care Encounters and Hospitalizations Among Adults During Periods of Delta and Omicron Variant Predominance—VISION Network, 10 States, August 2021–January 2022*. *MMWR Morb Mortal Wkly Rep* 2022;71:139–145. DOI: <http://dx.doi.org/10.15585/mmwr.mm7104e3>.

⁹⁷ *Supra* note 88.

⁹⁸ *Id.*

⁹⁹ See *supra* note 20.

¹⁰⁰ *COVID-19 Integrated County View*, Centers for Disease Control and Prevention, https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels (last updated Mar. 31, 2022); see also *infra* note 152.

¹⁰¹ Per internal CDC calculations.

¹⁰² *Supra* note 73.

¹⁰³ *Id.*

adults ages 18 years and older.¹¹² As of March 30, 2022, 48.3% of fully vaccinated individuals 18 years and older in the United States have also received a booster dose.¹¹³

Since the August Order, eligibility for COVID-19 vaccines has expanded to include children ages five to 11.¹¹⁴ Children ages six months through four years may soon become eligible for a COVID-19 vaccine; CDC is working with state and local jurisdictions for the eventual rollout of this critical product.¹¹⁵ Improving COVID-19 vaccination coverage among children and adolescents is crucial to maintaining low rates of COVID-19-associated morbidity and mortality among these groups and ensuring a safe and expedited return to normal routines for everyone.¹¹⁶

Vaccines, including boosters, continue to be the single most important public health tool for fighting COVID-19 and CDC recommends that all people get vaccinated as soon as they are eligible and stay up to date on vaccinations.¹¹⁷ Evidence shows that people who have completed the primary COVID-19 vaccination series, and received a booster when eligible, are at substantially reduced risk of severe illness and death from COVID-19; in

contrast, the cumulative rate of COVID-19-associated hospitalizations is substantially higher in unvaccinated adults than in those who are up to date on COVID-19 vaccines.¹¹⁸ Therefore, vaccines, including booster doses when appropriate, provide a substantial measure of protection against COVID-19-associated hospitalization and severe disease, including from the Omicron variant.¹¹⁹ The increased percentage of individuals who are not only vaccinated but have also received a booster—which was not available at the time of the August Order—strengthens community protection levels and is a critical step toward resuming normal routines safely.

The availability of COVID-19 vaccines globally has also increased dramatically since the August Order.¹²⁰ On August 2, 2021, only 29% of the world had received at least one dose of a COVID-19 vaccine, with 12% being fully vaccinated.¹²¹ As of March 30, 2022, 64.9% of the world population has received at least one dose of a COVID-19 vaccine and 57% of the global population is fully vaccinated with a primary vaccine series.¹²² Fighting COVID-19 abroad is key to the nation's effort to protect people at home and stay ahead of new variants; therefore, the United States remains committed to accelerating global vaccination efforts.¹²³

c. Treatments

Compared to August 2021, treatments for COVID-19 are more widely available. Although monoclonal antibodies were available in August 2021 and some continue to be effective and were widely used during the Omicron wave, such treatments must be administered by infusion and are cumbersome to administer. The FDA has issued emergency use

authorizations (EUA) for a number of treatments for COVID-19 for people at high risk of COVID-19 disease progression, some of which were developed after August 2021.¹²⁴ In February 2022, FDA issued an EUA for a new monoclonal antibody that is specifically effective in combatting the Omicron variant.¹²⁵ FDA has also authorized oral antiviral medications that target the SARS-CoV-2 virus.¹²⁶ The U.S. government has expedited the development, manufacturing, and procurement of these treatments, securing 20 million courses of antiviral pills, which have been shown to reduce the risk of hospitalization or death by 89%.¹²⁷ The availability of efficacious and accessible treatments add a powerful layer of protection against severe COVID-19 that was not available in the summer of 2021.¹²⁸ The U.S. government's commitment to making such medications available and the ability to produce variant-specific treatments are critical components of the next phase of the fight against COVID-19.

4. Congregate Settings

As highlighted in the August Order, the very nature of congregate settings increases the risk for COVID-19 outbreaks.¹²⁹ Now, however, numerous non-pharmaceutical and pharmaceutical interventions are available to decrease the spread and severity of COVID-19 in these settings.¹³⁰ Throughout the

¹¹² CDC Expands Eligibility for COVID-19 Booster Shots to All Adults, Centers for Disease Control and Prevention, <https://www.cdc.gov/media/releases/2021/s1119-booster-shots.html> (released Nov. 19, 2021). See also COVID-19 Vaccine Booster Shots, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/booster-shot.html> (updated Feb. 2, 2022).

¹¹³ See *supra* note 112 (citing data as of Mar. 30, 2022). Additionally, 46.5% of fully vaccinated individuals 12 years of age and older in the United States have received a booster dose.

¹¹⁴ See *supra* note 75.

¹¹⁵ COVID-19 Vaccination for Children, Centers for Disease Control and Prevention, <https://www.cdc.gov/vaccines/covid-19/planning/children.html> (last reviewed Dec. 9, 2021).

¹¹⁶ See generally Murthy BP, Zell E, Saelle R, et al. COVID-19 Vaccination Coverage Among Adolescents Aged 12–17 Years—United States, December 14, 2020–July 31, 2021. *MMWR Morb Mortal Wkly Rep* 2021;70:1206–1213. DOI: <http://dx.doi.org/10.15585/mmwr.mm7035e1>.

¹¹⁷ COVID-19 Vaccines Work, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/work.html> (updated Dec. 23, 2021). See also *supra* note 111, attributing decline of vaccine effectiveness to waning vaccine induced immunity over time, possible increased immune evasion by SARS-CoV-2 variants, or a combination of these and other factors and finding that receiving a booster shot was highly effective at preventing COVID-19-associated emergency department and urgent care encounters and preventing COVID-19-associated hospitalizations). See also *Stay Up to Date with Your Vaccines*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/stay-up-to-date.html> (updated Mar. 30, 2022), a person is considered up to date after receiving all recommended COVID-19 vaccines, including any booster dose(s) when eligible. See also *infra* I.B.5.

¹¹⁸ This pattern applies to all age groups but is most pronounced among adults aged 65 years and older, who are at increased risk for hospitalization and death.

¹¹⁹ A recent CDC study found that among people hospitalized with COVID-19, severe outcomes during the Omicron wave appear lower than during previous high transmission waves. *COVID Data Tracker Weekly Review: Boosters Work—Interpretive Summary for Feb. 11, 2022*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/past-reports/02112022.html>.

¹²⁰ Coronavirus disease (COVID-19): Vaccine access and allocation, World Health Organization, [https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-\(covid-19\)-vaccine-access-and-allocation](https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-(covid-19)-vaccine-access-and-allocation) (Aug. 6, 2021).

¹²¹ Coronavirus (COVID-19) Vaccinations, Our World in Data, <https://ourworldindata.org/covid-vaccinations#what-share-of-the-population-has-received-at-least-one-dose-of-the-covid-19-vaccine> (updated Mar. 30, 2022).

¹²² *Id.*

¹²³ See *supra* note 21.

¹²⁴ *Treatments Your Healthcare Provider Might Recommend if You Are Sick*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/your-health/treatments-for-severe-illness.html> (updated Jan. 13, 2022), noting monoclonal antibody treatments may help the immune system recognize and respond more effectively to the virus.

¹²⁵ FDA News Release: Coronavirus (COVID-19) Update: FDA Authorizes New Monoclonal Antibody for Treatment of COVID-19 that Retains Activity Against Omicron Variant, U.S. Food and Drug Administration, <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-new-monoclonal-antibody-treatment-covid-19-retains> (Feb. 11, 2022).

¹²⁶ See *supra* note 124.

¹²⁷ See *supra* note 21. The availability of new oral antiviral medications makes treatment more accessible to patients who are at risk for progression to severe COVID-19, see FDA News Release: Coronavirus (COVID-19) Update: FDA Authorizes First Oral Antiviral for Treatment of COVID-19, U.S. Food and Drug Administration, <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-first-oral-antiviral-treatment-covid-19> (Dec. 22, 2022).

¹²⁸ *Id.* Antiviral pills will also be added to the stockpile for the first time.

¹²⁹ See *supra* note 44, explaining preventing coronavirus disease 2019 (COVID-19) in correctional and detention facilities can be challenging because of population-dense housing, varied access to hygiene facilities and supplies, and limited space for isolation and quarantine.

¹³⁰ See *supra* note 108.

pandemic, congregate settings have adapted processes to mitigate COVID-19 risk, including incorporating mask use, improving ventilation, enhancing cleaning and disinfection procedures, and connecting people to medical care. Current CDC guidance for correctional and detention facilities recommends that certain key mitigation measures, including provision of vaccinations and use of standard infection controls remain in place at all times.¹³¹ In addition, facilities are encouraged to identify their own risk levels and apply additional mitigation measures as necessitated by local conditions.¹³²

Rather than requiring physical distancing to be kept in place at all times, CDC's congregate settings guidance allows such measures to be scaled up or down based on local data trends and facility characteristics.¹³³ Because case counts and hospitalizations are decreasing in most areas of the country, many correctional and detention facilities are resuming certain activities that had previously been paused to facilitate physical distancing, signaling the resumption of more normal operations for many congregate settings.¹³⁴

5. DHS Mitigation Measures

It is CDC's understanding that DHS facilities incorporate some of the recommended COVID-19 mitigation measures for congregate settings into their protocols. In particular, CBP continues to implement a variety of mitigation measures based on the infection prevention strategy referred to as the hierarchy of controls, which includes engineering upgrades, masking for migrants, and PPE for its workforce.¹³⁵ Moreover, vaccine uptake

¹³¹ *Id.* CDC recommends facilities should maintain, at all times, the following aspects of standard infection control, monitoring, and capacity to respond to cases of COVID-19: (1) Provide COVID-19 vaccination, including boosters; (2) maintain standard infection control; (3) maintain SARS-CoV-2 testing strategies; (4) prevent COVID-19 introduction from the community; and (5) prepare for outbreaks.

¹³² Some congregate settings and detention facilities are resuming activities such as inter-facility transfers and detention of individuals for non-violent offenses, which has previously been paused due to the pandemic.

¹³³ *Id.* (Recommending that facilities develop and use metrics to guide modification of COVID-19 prevention measures using data on local trends and facility characteristics).

¹³⁴ Per information provided by DHS.

¹³⁵ These mitigation efforts include installing plexiglass dividers in facilities, enhancing ventilation systems, adhering to CDC guidance of cleaning and disinfection, and providing masks to migrants, as well as PPE to CBP personnel. These measures generally follow the infection prevention control referred to as the hierarchy of controls. See *Hierarchy of Controls*, Centers for Disease Control and Prevention, available at <https://www.cdc.gov/>

among the CBP workforce has reached approximately 86% among personnel on the U.S.-Mexico border.

Of particular note, DHS has recently begun implementing a vaccination program for migrants processed under Title 8 immigration authorities and held in CBP facilities. The DHS vaccination program will apply to all age-appropriate migrants who lack legal status and are processed pursuant to Title 8 authorities; have entered the United States after crossing the Southwest Border; and are taken into DHS custody. DHS has conveyed to CDC that all such migrants who are unable to provide proof of vaccination with an FDA EUA- or WHO EUL-approved vaccine will be provided an initial dose of a COVID-19 mRNA vaccine. DHS began implementing their vaccination program at 11 sites on March 28, 2022. DHS is working to expand this program over the next two months and states that their goal is to provide vaccinations to up to 6,000 migrants a day across 27 sites across the Southwest Border by May 23, 2022.

In addition, since the August Order, the DHS Office of the Chief Medical Officer has worked with partners in local communities to move individuals safely out of CBP custody and through the appropriate Title 8 immigration procedures, as applicable to the individual noncitizens. Through these partnerships, DHS has supported state, local, tribal, and territorial partners and NGOs in developing robust COVID-19 testing and quarantine programs along the Southwest Border.

II. Public Health Determination

As the COVID-19 pandemic and public health landscape evolve, CDC reassesses the need for continued measures under 42 U.S.C. 265, 268 and 42 CFR 71.40, the authorities that support the CDC Orders.¹³⁶ This Public Health Determination and Termination is based upon the most recent science and data available to CDC. Based upon the data, CDC has determined that, although the implementation of the CDC Orders to reduce the numbers of

niosh/topics/hierarchy/default.html (last visited Mar. 30, 2022). The hierarchy of controls is used as a means of determining how to implement feasible and effective control solutions. The hierarchy is outlined as: (1) Elimination (physically remove the hazard); (2) Substitution (replace the hazard); (3) Engineering Controls (isolate people from the hazard); (4) Administrative Controls (change the way people work); and (5) PPE (protect people with Personal Protective Equipment). CBP also continues to update the CBP Job Hazard Analysis and the CBP COVID toolkit based on the latest relevant public health guidance.

¹³⁶ As noted above, CDC reviews the public health rationale underlying the need for the Order every 60 days.

noncitizens held in congregate settings in POEs and Border Patrol stations has been part of the layered COVID-19 mitigation strategy used over the past two years, less burdensome measures are now available to mitigate the introduction, transmission, and spread of COVID-19 resulting from the entry of covered noncitizens.

This Public Health Determination and Termination is the most recent step in CDC's continued efforts toward aligning the public health measures response to the COVID-19 pandemic with the best available science. Throughout the COVID-19 pandemic, CDC has taken a range of actions to help protect the public's health. These actions have been informed by the status of the pandemic based on the scientific and epidemiological information available at the time. The actions fall along a spectrum of restrictions on movement and activities in public. Some, like the masking order for conveyances, impact individuals but do not restrict movement; others, like the No Sail Order, apply to entire industries.

The CDC Orders issued under the authorities of 42 U.S.C. 265, 268 and 42 CFR 71.40 suspending the right to introduce certain persons into the United States are among the most restrictive measures CDC has undertaken in the fight against COVID-19. The U.S. government has only used the extraordinary authority available under 42 U.S.C. 265 to restrict the introduction of persons in one instance prior to the COVID-19 pandemic—in 1929, in response to a meningitis outbreak.¹³⁷ During the earlier periods of the COVID-19 pandemic, while scientists were still learning about its epidemiology and developing therapeutics and vaccines, the CDC Orders were deemed necessary due to the rapid spread of the virus. As the understanding of the virus has grown and vaccines and therapeutics for the disease have become more widely available, lower COVID-19 Community Levels have been observed.

The August Order recognized the full panoply of mitigation measures available as key to slowing the spread of the virus and protecting U.S. healthcare systems while widespread vaccination efforts continued. Like other COVID-19 mitigation measures issued by CDC, the August Order was always intended as a temporary measure as understanding of the virus evolved. The scientific knowledge, availability of vaccines and

¹³⁷ See 85 FR 56424, 56440-42 (noting that, despite passing the precursor to 42 U.S.C. 265 during a cholera epidemic in 1893, the U.S. government did not exercise this authority until 1929).

therapeutics, and high percentage of the U.S. population living in a county identified as having “low” or “medium” COVID-19 Community Levels have permitted CDC to carefully step-down the various public health mitigation measures used. This step-down involves purposeful narrowing of some restrictions while terminating others when the public health need for and efficacy of the measures no longer outweigh the severity of the restriction. For example, CDC took the unprecedented step of halting cruise ship travel during the earliest phases of the pandemic, but permitted gradual resumption of cruises as the public health situation evolved.¹³⁸ Likewise, the United States has transitioned from suspending the entry of persons traveling from specified countries¹³⁹ to a framework of CDC travel health notices and testing and proof of vaccination requirements¹⁴⁰ that allow for reopening global travel and migration while still implementing necessary mitigation measures. CDC believes that the restrictions remaining in place as part of the travel framework (e.g., proof of vaccination requirements for noncitizens entering the United States by air or land POE, and proof of a negative COVID-19 test result)¹⁴¹ continue to be necessary and are appropriately balanced to minimize restrictions on individuals. CDC continually evaluates the need for these measures and is committed to tailoring them to meet the current public health needs. These careful step-downs have been driven by the evolution of the COVID-19 pandemic and scientific developments and are part of CDC’s commitment to exercise its authorities

¹³⁸ CDC issued the original No Sail Order on March 14, 2020, and a version of the order remained in place until October 29, 2020, when it was replaced with a Framework for Conditional Sailing which permitted a phased resumption of cruise ship operations as long as certain public health mitigation measures were met. This Framework for Conditional Sailing became non-binding for cruise ships in Florida by court order in July 2021 and was allowed to expire on January 15, 2022. The Framework was replaced by a voluntary program, CDC’s COVID-19 Program for Cruise Ships, wherein cruise lines choosing to opt into the program are required to follow all recommendations and guidance as a condition of their participation in the program. See *Technical Instructions for CDC’s COVID-19 Program for Cruise Ships Operating in U.S. Waters*, Centers for Disease Control and Prevention, <https://www.cdc.gov/quarantine/cruise/management/technical-instructions-for-cruise-ships.html#program-for-cruise-ships> (last updated Mar. 18, 2022); see also *supra* notes 38, 49, and 60.

¹³⁹ See *supra* notes 35, 59, 66, 78, and 79.

¹⁴⁰ See *supra* note 67.

¹⁴¹ *CDC Orders*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/cdcreponse/laws-regulations.html> (updated Mar. 12, 2022).

in a manner that provides the greatest benefit for public health while imposing the minimum necessary burden on individuals and communities.

In the context of the CDC Orders issued under 42 U.S.C. 265, 268 and 42 CFR 71.40, this public health-driven step-down first narrowed implementation to except UC and then fully terminated the Orders with respect to UC once there was no longer public health justification for such a suspension. While the CDC Orders under 42 U.S.C. 265, 268 and 42 CFR 71.40 provided an important measure to protect against the introduction, transmission, and spread of COVID-19 during earlier phases of the pandemic by reducing the number of noncitizens held in congregate settings, other public health measures are now available to provide necessary public health protection for noncitizens, Americans, and the DHS workforce.¹⁴² CDC acknowledges that public health concerns may arise in congregate settings, including COVID-19 transmission. CDC has determined that, although there is still a risk of COVID-19 transmission in crowded congregate settings, including DHS facilities, that risk does not present a sufficiently serious danger to public health to necessitate maintaining the August Order. Furthermore, the mitigation measures available will help reduce severe outcomes and reduce the serious danger of introduction, transmission, and spread of COVID-19 into the United States by covered noncitizens.

Both at home and abroad, vaccination rates are increasing. Vaccination among the American public and the DHS workforce in particular has been largely successful and, as stated in the August Order, widespread vaccination of federal employees and personnel in congregate settings at POE and Border Patrol stations demonstrates important progress toward the normalization of border operations.¹⁴³ Since August 2021, vaccination rates in the countries of origin for the current majority of incoming noncitizens have also increased dramatically.¹⁴⁴ Such global

¹⁴² Since the August Order, the collection, production, and analysis of key COVID-19 response metrics has continued to expand. Advances in public health surveillance may enable officials and facilities (including congregate setting facilities) to rapidly institute necessary mitigation measures in the event of an outbreak. For example, CDC launched and is continually enhancing the National Wastewater Surveillance System to track the presence of SARS-CoV-2 in wastewater samples collected across the country. See *supra* note 21.

¹⁴³ CBP most recently reported vaccination rates between 75% and 91% among its U.S. Border Patrol and Office of Field Operations personnel.

¹⁴⁴ Thus far in 2022, Mexico, Cuba, Guatemala, Honduras, and Nicaragua constitute the top five

countries of origin for covered noncitizens. Rates of vaccination for each country are as follows: Cuba: 88% fully vaccinated, 94% only partly vaccinated; Guatemala: 33% fully vaccinated, 9.8% only partly vaccinated; Honduras: 47% fully vaccinated, 6% only partly vaccinated; Mexico: 61% fully vaccinated, 4.5% only partly vaccinated; Nicaragua: 61% fully vaccinated, 82% only partly vaccinated. *Coronavirus (COVID-19) Vaccinations*, Our World in Data, <https://ourworldindata.org/covid-vaccinations> (last visited Mar. 31, 2022).

increases in vaccination rates and infection-induced immunity provide additional layers of protection. As noted above, DHS is currently scaling up a program that provides vaccines to encountered noncitizens taken into CBP custody along the Southwest Border.¹⁴⁵ CDC is supportive of these efforts as a public health measure as they align with CDC’s and the U.S. government’s emphasis on global vaccination to fight COVID-19. Even if full COVID-19 vaccination cannot be assured, partial vaccination provides some level of protection against severe illness and hospitalization and helps maintain U.S. healthcare resources.¹⁴⁶

The August Order also highlighted the threat posed by emerging variants and the potential for a future, vaccine-resistant variant, either of which could negatively impact U.S. communities and local healthcare resources.¹⁴⁷ Based in part on these threats, CDC concluded at that time that SA and FMU should continue to be subject to the August Order, pending further improvements in the public health situation, and subject to continual reassessment.¹⁴⁸ Since the August Order was implemented, public health officials have learned a great deal about variants and how best to respond to them. In response to Omicron, the U.S. government updated the National COVID-19 Preparedness Plan for monitoring COVID-19 to swiftly adapt tools to combat a new variant and help deploy emergency resources to help communities.¹⁴⁹ The Plan includes steps to ensure that variant surveillance,

¹⁴⁵ See *supra* I.B.5. CDC strongly supports broad vaccination at the Southwest Border in furtherance of public health, and will implement termination of the Order on May 23, 2022, in part to give DHS time to scale up its vaccination program. That said, given the current status of the pandemic and the range of mitigation measures currently in place and in the process of being implemented, CDC believes the serious risk to public health that the CDC Orders were intended to address has been sufficiently alleviated, even in the absence of complete implementation of the DHS vaccination program.

¹⁴⁶ As demonstrated by the U.S. government’s experience with Operation Artemis and Operation Allies Welcome, a COVID-19 vaccination program helps protect noncitizens, as well as personnel serving these populations and American communities. Vaccination of all encountered noncitizens aligns with larger U.S. government pandemic efforts and safe travel policies.

¹⁴⁷ 86 FR 42828, 42837.

¹⁴⁸ *Id.*

¹⁴⁹ See *supra* note 21.

vaccines, tests, and treatments can be updated and deployed quickly.¹⁵⁰

At this point in the pandemic, the United States has high rates of vaccine and infection-induced immunity in the population, as well as availability of effective therapeutics, testing, and well-fitting masks. These tools, which have been developed and distributed over the past two years, help minimize medically significant disease and prevent excessive strain on the healthcare sector even while SARS-CoV-2 virus continues to circulate. As noted above, 97.1% of the U.S. population is currently living in an area classified as having a “low” COVID-19 Community Levels, meaning most of the population can operate under more relaxed COVID-19 mitigation strategies.¹⁵¹ Noteworthy for purposes of this Determination, as of March 31, 2022, all 24 U.S. counties along the U.S.-Mexico border are classified as having a “low” COVID-19 Community Level.¹⁵² Like prior CDC Orders, the August Order, issued during the fourth wave of the pandemic, noted the goal of slowing the introduction, transmission, and spread of SARS-CoV-2 into the United States by covered noncitizens.¹⁵³ With the ebb of the Omicron surge across the United States, however, the public health findings underlying the August Order have changed. Although COVID-19 remains a concern, the readily available and less burdensome public health mitigation tools to combat the disease render an order under 42 U.S.C. 265 to prevent a serious danger to the public health unnecessary. At this point in the pandemic, the previously identified public health risk is no longer commensurate with the extraordinary measures instituted by the CDC Orders. As the pandemic evolves, CDC will continue to monitor the situation with respect to COVID-19 at U.S. borders and will continue to consult with DHS on combatting COVID-19 in DHS facilities

following the Termination of the August Order.

III. Legal Considerations

A. Temporary Nature of Orders Under 42 U.S.C. 265 and Absence of Reliance Interests

In issuing this Public Health Determination and Termination, CDC has considered whether state or local governments, or their subdivisions, have any “legitimate reliance”¹⁵⁴ interests in the continued expulsion of covered noncitizens pursuant to 42 U.S.C. 265 (Section 265). CDC has determined that no state or local government could be said to have legitimately relied on the CDC Orders issued under 42 U.S.C. 265, 268 and 42 CFR 71.40 to implement long-term or permanent changes to its operations because those orders are, by their very nature, short-term orders, authorized only when specified statutory criteria are met, and subject to change at any time in response to an evolving public health crisis. Section 265 may be invoked only if CDC determines that there is a “serious danger of the introduction of [a communicable] disease into the United States, and that this danger is so increased by the introduction of persons or property from such country [where the communicable disease exists] that a suspension of the right to introduce such persons and property is required in the interest of the public health.”¹⁵⁵ Moreover, the statute may be invoked only “for such period of time as [CDC] may deem necessary” to avert such a danger.¹⁵⁶ As HHS’s implementing regulation further recognizes, in prohibiting the introduction of covered persons “in whole or in part,”¹⁵⁷ a CDC Order is effective “only for such period of time that the Director deems necessary to avert the serious danger of the introduction of a quarantinable communicable disease.”¹⁵⁸

For these reasons, the CDC Orders have consistently been subject to periodic reviews to ensure their continued necessity. CDC’s initial order issued in March 2020 made clear that the Order represented a “temporary suspension of the introduction of [covered] persons into the United States”¹⁵⁹ and that the order would remain effective only for “30 days, or until [CDC] determine[s] that the danger of further introduction of COVID-19

into the United States has ceased to be a serious danger to the public health, whichever is shorter.”¹⁶⁰ The March 2020 Order was subsequently extended on April 20, 2020, and then amended on May 19, 2020. The fact that the policy was frequently reviewed should have underscored that CDC’s use of its authority under 42 U.S.C. 265 was a temporary measure subject to change at any time. The October 2020 Order again confirmed this understanding of CDC’s authority, noting the “temporary” nature of the suspension of the introduction of covered persons, as well as the facts that the Order would be reviewed every 30 days based on “the latest information regarding the status of the COVID-19 pandemic and associated public health risks,” and that CDC “retain[ed] the authority to extend, modify, or terminate the Order, or implementation of [the] Order, at any time as needed to protect public health.”¹⁶¹

In addition, CDC’s ability to exercise its authority under Section 265 as to certain groups has fluctuated due to litigation, further rendering it unreasonable for any state or local government to have acted in reliance on the continued exercise of the authority. CDC’s exercise of the Section 265 authority was first challenged shortly after CDC issued its initial order in March 2020, and subsequent court orders enjoining CDC from exercising its authority under 42 U.S.C. 265 as to certain groups of covered noncitizens should have further discouraged reliance on temporary CDC orders. For example, in November 2020, the United States District Court for the District of Columbia enjoined the expulsion of UC on the basis that Section 265 likely did not authorize such expulsions.¹⁶² Although the government obtained a stay of the injunction in January 2021,¹⁶³ the extent of the government’s authority under Section 265 remained contested. In addition, in September 2021, the United States District Court for the District of Columbia similarly enjoined the expulsion of FMU, again on the basis that Section 265 likely did not authorize such expulsions.¹⁶⁴ The U.S. Court of Appeals for the D.C. Circuit recently upheld the government’s authority under 42 U.S.C. 265 to expel FMU, but the court held

¹⁵⁰ *Id.*

¹⁵¹ Per internal CDC calculations.

¹⁵² *COVID-19 Integrated County View*, Centers for Disease Control and Prevention, https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels (last updated Mar. 31, 2022), noting 100% (n=24) of counties along the U.S.-Mexico border are considered “Low”: California (San Diego County, Imperial County); Arizona (Pima County, Santa Cruz County, Cochise County, Yuma County); New Mexico (Luna County, Dona Ana County, Otero County, Eddy County, Lea County); and Texas (Presidio County, Brewster County, Terrell County, Webb County, Zapata County, Cameron County, El Paso County, Hudspeth County, Val Verde County, Kinney County, Maverick County, Starr County, Hidalgo County).

¹⁵³ See 86 FR 42828, 42834 and 42838.

¹⁵⁴ See *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020).

¹⁵⁵ 42 U.S.C. 265.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ 42 CFR 71.40(a).

¹⁵⁹ 85 FR at 17061 (emphasis added).

¹⁶⁰ 85 FR at 17068.

¹⁶¹ 85 FR at 65807, 65812.

¹⁶² See *P.J.E.S. v. Wolf*, 502 F. Supp. 3d 492 (D.D.C. 2020).

¹⁶³ Order, *P.J.E.S. v. Mayorkas, et al.*, No. 20–5357 (D.C. Cir. Jan. 29, 2021), Doc. No. 1882899.

¹⁶⁴ See *Huisha-Huisha v. Mayorkas*, No. CV 21–100 (EGS), 2021 WL 4206688, at *12 (D.D.C. Sept. 16, 2021).

that such expulsions cannot be to places where the noncitizen are likely to be persecuted or tortured.¹⁶⁵ Although the decision will not take effect until the mandate issues in late April 2022, the decision should have put any state or local government on notice that there might be significant practical constraints on the government's ability to expel covered FMU quickly.

Moreover, by August 2021, state and local governments were on notice that the federal government would be taking steps towards the resumption of normal border operations. In the August 2021 Order, CDC stated that it "view[ed] this public health reassessment as setting forth a roadmap toward the safe resumption of normal processing of arriving noncitizens, taking into account COVID-19 concerns and immigration facilities' ability to implement mitigation measures."¹⁶⁶ Accordingly, state and local governments could not have reasonably relied on CDC's indefinite use of its expulsion authority under Section 265. As a factual matter, CDC is not aware of any reasonable or legitimate reliance on the continued expulsion of covered noncitizens under 42 U.S.C. 265 beyond potentially local healthcare systems' allocation of resources, which CDC has considered in this Order.¹⁶⁷

Even if a state or local government had relied on the continued existence of a CDC order under this authority, 42 U.S.C. 265 only authorizes CDC to prevent the introduction of noncitizens when it is required in the interest of public health. No state or local government could reasonably rely on CDC's continued application of Section 265 once CDC determined that there is no longer sufficient public health risk present with respect to the introduction of covered noncitizens. Therefore, CDC's considered judgment is that any reliance interest that might be said to

¹⁶⁵ *Id.* at *1. The D.C. Circuit also noted the "considerable difference" in public health situations between March 2020 and March 2022. *Id.* at *13.

¹⁶⁶ 86 FR 42828, 42831; *see also id.* at 42837 (discussing a necessary mitigation measure "as DHS moves towards the resumption of normal border operations"); *id.* at 42838 ("CDC believes that the gradual resumption of normal border operations under Title 8 is feasible. With careful planning, this may be initiated in a stepwise manner that complies with COVID-19 mitigation protocols."); *id.* at 42840 (noting that "although this Order will continue with respect to SA and FMU, DHS will use case-by-case exceptions based on the totality of the circumstances where appropriate to except individual SA and FMU in a manner that gradually recommences normal migration operations as COVID-19 health and safety protocols and capacity allows"); *id.* (CDC considered "the use of case-by-case exceptions as a step towards the resumption of normal border operations under Title 8").

¹⁶⁷ *See supra* I.B.2.

exist in connection with the continued suspension of the right to introduce covered noncitizens under 42 U.S.C. 265 is not weighty enough to displace CDC's determination that there is no public health justification for such a suspension at this time.¹⁶⁸ To the extent that any state or local government did rely on the expulsion of noncitizens for purposes of resource allocation despite the reasons cautioning against such reliance, CDC concludes that resource allocation concerns do not outweigh CDC's determination that the suspension of the right to introduce covered noncitizens is not required to avert a serious danger to public health.

CDC has also considered whether there may be any short-term reliance on the continued expulsion of noncitizens under the August 2021 Order. CDC concludes that any short-term reliance interests should be limited for all the reasons explained above, and particularly in light of the expressly temporary nature of the Order. For the same reasons, CDC concludes that any such reliance does not outweigh CDC's determination that the expulsion of covered noncitizens is not required to avert a serious danger to public health. Moreover, to the extent that any state or local government has made any short-term plans based on the existence of the August Order, the effective date of this Termination has been set for 52 days from the date of issuance, thus providing state and local governments time to adjust to the resumption of regular Title 8 immigration processing.

Finally, the CDC Orders issued under 42 U.S.C. 265, 268 and 42 CFR 71.40 are not, and do not purport to be, policy decisions about controlling immigration; rather, as explained, CDC's exercise of its authority under Section 265 depends on the existence of a public health need. Thus, to the extent that state and local governments along the border or elsewhere were relying on an order under 42 U.S.C. 265 as a means of controlling immigration, such reliance would not be reasonable or legitimate. And even if such reliance were reasonable or legitimate, that reliance would not outweigh CDC's conclusion that expulsions are not necessary under the terms of 42 U.S.C. 265 or warrant disruption of ordinary processing of covered noncitizens.

¹⁶⁸ *See Regents*, 140 S. Ct. at 1913 (explaining that features evidencing the temporary and non-rights-conferring nature of a government program "surely are pertinent in considering the strength of any reliance interests," and can be considered by the agency).

B. Basis for Termination Under 42 U.S.C. 265, 268 and 42 CFR 71.40

CDC is hereby terminating the August Order¹⁶⁹ and all prior orders issued pursuant to sections 362 and 365 of the PHS Act (42 U.S.C. 265, 268) and the implementing regulation at 42 CFR 71.40.¹⁷⁰ This Termination will be implemented on May 23, 2022, for the operational reasons outlined herein, including to give DHS time to implement additional COVID-19 mitigation measures. The statutory and regulatory authorities permit the CDC Director to issue Orders prohibiting, in whole or in part, the introduction into the United States of persons from designated foreign countries (or one or more political subdivisions or regions thereof) or places, *only for such period of time that the Director deems necessary* to avert the serious danger of the introduction of a quarantinable communicable disease, based on a determination by the Director that:

(1) By reason of the existence of any quarantinable communicable disease in a foreign country (or one or more political subdivisions or regions thereof) or place there is serious danger of the introduction of such quarantinable communicable disease into the United States; and

(2) This danger is so increased by the introduction of persons from such country (or one or more political subdivisions or regions thereof) or place that a suspension of the right to introduce such persons into the United States is required in the interest of public health.¹⁷¹

Pursuant to 42 U.S.C. 265 and the implementing regulation, the CDC Director has the authority to issue orders to mitigate the introduction and further spread of COVID-19 disease.¹⁷² In recognition of the extraordinary nature of these emergency public health powers, section 265 and its implementing regulation contemplate that the exercise of these authorities will be temporally and geographically limited in scope as described below. Critically, these authorities also require that any orders issued will be terminated when they are no longer necessary to protect the public health. The authority to make this determination has been delegated to the CDC Director.

¹⁶⁹ *See supra* notes 1 and 4.

¹⁷⁰ *See supra* note 7.

¹⁷¹ 42 U.S.C. 265; 42 CFR 71.40.

¹⁷² 85 FR 56424, 56425-26. The Director may suspend the introduction of persons not only to prevent the introduction of a quarantinable communicable disease, but also to aid in continued efforts to mitigate spread of that disease.

CDC explained in the preamble to the Final Rule for 42 CFR 71.40 that, in issuing an Order under these authorities, it may “consider a wide array of facts and circumstances when determining what is required in the interest of public health in a particular situation . . . includ[ing]: the overall number of cases of disease; any large increase in the number of cases over a short period of time; the geographic distribution of cases; any sustained (generational) transmission; the method of disease transmission; morbidity and mortality associated with the disease; the effectiveness of contact tracing; the adequacy of state and local healthcare systems; and the effectiveness of state and local public health systems and control measures.”¹⁷³ Other factors noted in the Final Rule are the potential for disease spread among persons held in congregate settings, the potential for disease spread to the community at large, and strain on healthcare systems.¹⁷⁴

CDC is committed to avoiding the imposition of unnecessary burdens in exercising its communicable disease authorities. This aligns with the underlying legal authority in 42 U.S.C. 265, which makes clear that this authority extends only for *such period of time* deemed necessary to avert the serious danger of the introduction of a quarantinable communicable disease into the United States.¹⁷⁵ Such an order must also be predicated, in part, upon a determination that the danger of such introduction is so increased that a suspension of the right to introduce such persons into the United States is *required in the interest of public health*.¹⁷⁶

CDC has considered these and other relevant factors in the foregoing determination, including the overall shift in the U.S. government response to the pandemic, and has determined that less restrictive means are available to avert the public health risks associated with the introduction, transmission, and spread of COVID-19 into the United States due to the entry of covered noncitizens. Although COVID-19 continues to spread within the United States, as a result of the numerous tools for disease prevention, mitigation, and treatment which have become available over the past two years, and the other considerations explained above, an order suspending the right to introduce covered noncitizens under 42 U.S.C.

265 is no longer required in the interest of public health.

IV. Issuance and Implementation

Based on the foregoing Public Health Determination, I hereby Terminate the August Order and all previous orders issued pursuant to Sections 362 and 365 of the PHS Act (42 U.S.C. 265, 268), and their implementing regulations under 42 CFR 71.40.¹⁷⁷ This Termination will be implemented on May 23, 2022.

Following an assessment of the current epidemiologic status of the COVID-19 pandemic and the U.S. government’s ongoing response efforts, I find there is no longer a public health justification for the August Order and previous Orders issued under these authorities; employing such a broad restriction to preserve the health and safety of U.S. citizens, U.S. nationals, and lawful permanent residents, and personnel and noncitizens in POE and U.S. Border Patrol stations is no longer necessary to protect the public health. Other current public health mitigation measures sufficiently reduce the serious danger of introduction, transmission, and spread of the virus that causes COVID-19 as a result of the entry of covered noncitizens, including in congregate settings where such noncitizens would otherwise be held while undergoing immigration processing, including at POE and U.S. Border Patrol stations at or near the U.S. land and adjacent coastal borders.

Termination of the August Order is based on the current status of the COVID-19 pandemic and the available public health mitigation measures. In making this determination, I have considered myriad facts, including epidemiological information such as the viral transmissibility and asymptomatic transmission of COVID-19, the epidemiology and spread of SARS-CoV-2 variants, the morbidity and mortality associated with the disease for individuals in certain risk categories, COVID-19 Community Levels, national levels of transmission and immunity, the availability and efficacy of vaccination and treatments, as well as public health concerns with congregate settings at border facilities. While holding noncitizens in congregate settings with limited options for COVID-19 mitigation is accompanied by inherent risk, the overall public health landscape in the United States has changed such that the justification

for the August Order is no longer sustained.

The COVID-19 pandemic is ongoing and appropriate public health mitigation measures must continue to be applied.¹⁷⁸ Although it cannot be known how the spread of SARS-CoV-2 will change in the future (*e.g.*, due to the emergence of a new variant), CDC plans to rely on COVID-19 Community Levels, among other factors, to inform how prevention measures may be used to minimize the impact of COVID-19 on health and society, including at the U.S. borders.¹⁷⁹ To that end, CDC will continue to assess the public health situation at the U.S. borders even after this Termination as part of its comprehensive COVID-19 response. If, for example, there is a substantial change in the public health situation with respect to the pandemic, such as due to new and particularly concerning SARS-CoV-2 variants, CDC could determine a new order under 42 U.S.C. 265, 268 and 42 CFR 71.40 is necessary. Any such determination would be based on the public health needs identified at that time.

A. Implementation of This Termination

CDC is required by the Final Rule to consult with “all Federal departments or agencies whose interests would be impacted by this order,” “as practicable under the circumstances.”¹⁸⁰ CDC recognizes that resumption of border operations under Title 8 authorities, and the need to put additional appropriate COVID-19 mitigation measures in place, requires time to operationalize in a manner that protects the health and safety of the migrants, workforce, and American communities. Based on DHS’ recommendation and in order to provide DHS time to implement operational plans for fully resuming Title 8 processing, including incorporating appropriate COVID-19 measures, this Termination will be implemented on May 23, 2022.

DHS has represented that over the next several weeks it is taking important steps to implement processes in preparation for the full resumption of border operations pursuant to Title 8 authorities, in a manner that promotes the health and safety of migrants, CBP employees, and the local communities. Most recently, DHS has initiated a vaccination program for all age-eligible migrants who lack legal status and are processed pursuant to Title 8

¹⁷⁷ Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right to Introduce and Prohibition of Introduction of Persons into United States from Designated Foreign Countries or Places for Public Health Purposes, 85 FR 56424 (Sept. 11, 2020).

¹⁷⁸ See *supra* note 105, indicating that the whole community can be safe only when [everyone] take[s] steps to protect each other, even when the COVID-19 Community Level is low or medium.

¹⁷⁹ *Id.*

¹⁸⁰ 42 CFR 71.40.

¹⁷³ *Id.* at 56444.

¹⁷⁴ *Id.* at 56431; 56434.

¹⁷⁵ 42 U.S.C. 265; 42 CFR 71.40.

¹⁷⁶ 42 CFR 71.40.

authorities; this program will be scaled up over the next two months.¹⁸¹ As stated above, CDC recognizes vaccination as the single most important public health tool for fighting COVID-19 and recommends that all eligible persons, regardless of citizenship, be vaccinated and remain up to date with boosters.¹⁸² The implementation timeline of this Termination will provide DHS with time to scale its vaccination program, as well as ready its operational capacity, implement appropriate COVID-19 protocols, and prepare for resumption of regular migration under Title 8.

CDC recognizes that the Termination of the August Order will lead to an increase in the number of noncitizens being processed in DHS facilities which could result in overcrowding in congregate settings. Moreover, DHS projects, based on available intelligence as well as seasonal migration patterns, an increase in encounters in the coming months, which could lead to further crowding in DHS facilities. DHS reports that it is taking steps to plan for such increases, including by readying decompression plans, deploying additional personnel and resources to support U.S. Border Patrol, and enhancing its ability to safely hold noncitizens it encounters. Putting such plans in place, ensuring that the workforce is adequately and appropriately trained for their shifting roles, and deploying critical resources require time. This Termination will be implemented on May 23, 2022, to provide DHS with additional time to ready such operational plans and prepare for full resumption of regular migration under Title 8.

For the foregoing reasons, this Termination will be implemented on May 23, 2022. To the extent that any state or local government has a misplaced reliance interest on the August Order, the timeline for implementation of the Termination also allows time for such entities to adjust their planning in anticipation of the full resumption of Title 8 border processing. During this temporary period of continued application of the August Order, DHS will continue to exercise its discretion to issue case-by-case exceptions based on the totality of the circumstances as set forth in the August

Order.¹⁸³ DHS has represented that it will continue to make use of this exception where, for example, a noncitizen may suffer particular harms associated with expulsion (*e.g.*, vulnerable and medically fragile persons) until the Termination is effective.

B. APA Review

This Termination shall be implemented on May 23, 2022. I consulted with DHS and other federal departments as required by the Final Rule before I issued this Order and requested that DHS aid in the implementation of this Termination.¹⁸⁴ DHS is developing operational plans for implementing this Termination. CDC will review these plans and ensure that they are consistent with the language of this Termination and public health best practices.

This Termination, like the preceding Orders issued under this authority, is not a rule subject to notice and comment under the Administrative Procedure Act (APA).¹⁸⁵ Even if it were, notice and comment are not required because there is good cause to dispense with prior public notice and the opportunity to comment on this Termination.¹⁸⁶ Given the extraordinary nature of an order under Section 265, the resultant restrictions on application for asylum and other immigration processes under Title 8, and the statutory and regulatory requirement that an CDC order under the authority last no longer than necessary to protect public health, it would be impracticable and contrary to the public interest and immigration laws that apply in the absence of an order under 42 U.S.C. 265 to delay the effective date of this termination beyond May 23, 2022 for the reasons outlined herein.¹⁸⁷ As explained, DHS requires time to

institute operational plans to implement this order, including COVID-19 mitigation measures, and begin regular immigration processing pursuant to Title 8. In light of the August Order's significant disruption of ordinary immigration processing and DHS's need for time to implement an orderly and safe termination of the order, there is good cause not to delay issuing this termination or to delay the termination of this order past May 23, 2022. In addition, this Order concerns ongoing discussions with Canada, Mexico, and other countries regarding immigration and how best to control COVID-19 transmission over shared borders and therefore directly "involve[s] . . . a . . . foreign affairs function of the United States;"¹⁸⁸ thus, notice and comment are not required.

With this Termination, I hereby determine that the danger of further introduction, transmission, or spread of COVID-19 into the United States from covered noncitizens, as defined in the August Order, has ceased to be a serious danger to the public health and therefore the continuation of the August Order, and all previous orders issued under the same authority, is no longer necessary to protect public health. Nothing in this Termination will prevent me from issuing a new Order under 42 U.S.C. 265, 268 and 42 CFR 71.40 based on new findings, as dictated by public health needs.

Sherri Berger,

Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2022-07306 Filed 4-4-22; 11:15 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH); Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: This gives notice under the Federal Advisory Committee Act of October 6, 1972, that the Advisory Board on Radiation and Worker Health (ABRWH), Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed

¹⁸⁸ 5 U.S.C. 553(a)(1).

¹⁸¹ See *supra* I.B.5.

¹⁸² In line with CDC's emphasis on the importance of vaccination, CDC has kept its requirement for noncitizens to provide proof of vaccination for air travel and also supports DHS's Order requiring the same at the land borders (*see supra* notes 67 and 83).

¹⁸³ "Persons whom customs officers determine, with approval from a supervisor, should be excepted from this Order based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, humanitarian, and public health interests. DHS will consult with CDC regarding the standards for such exceptions to help ensure consistency with current CDC guidance and public health recommendations." 86 FR 42828, 42841 (Aug. 5, 2021).

¹⁸⁴ 42 U.S.C. 268; 42 CFR 71.40(d).

¹⁸⁵ While this Termination is not a rule subject to notice and comment under the APA (5 U.S.C. 553), the Office of Information and Regulatory Affairs has determined that this is a major rule as defined by Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act (CRA). 5 U.S.C. 804(2). The agency finds, for the reasons listed above, that good cause exists to make this rule effective on May 23, 2022, under 5 U.S.C. 808(2).

¹⁸⁶ 5 U.S.C. 553(b)(3)(B).

¹⁸⁷ 5 U.S.C. 553(a)(1).

for a 2-year period through March 22, 2024.

FOR FURTHER INFORMATION CONTACT:

Rashaun Roberts, Ph.D., Designated Federal Officer, National Institute for Occupational Safety and Health, CDC, 1090 Tusculum Avenue, Mailstop C-24, Cincinnati, Ohio 45226, Telephone: (513) 533-6800, Email: ocas@cdc.gov.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022-07241 Filed 4-5-22; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS-10511 and CMS-10440]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be

collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by June 6, 2022.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: _____, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-10511 Medicare Coverage of Items and Services in FDA Investigational Device Exemption Clinical Studies—Revision of Medicare Coverage

CMS-10440 Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Health Insurance Marketplaces, Medicaid and Children's Health Insurance Program Agencies

Under the PRA (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of

information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Reinstatement without change; *Title of Information Collection:* Medicare Coverage of Items and Services in FDA Investigational Device Exemption Clinical Studies—Revision of Medicare Coverage; *Use:* Section 1862(m) of the Social Security Act (and regulations at 42 CFR Subpart B (sections 405.201-405.215) allows for payment of the routine costs of care furnished to Medicare beneficiaries in a Category A investigational device exemption (IDE) study and authorizes the Secretary to establish criteria to ensure that Category A IDE trials conform to appropriate scientific and ethical standards. Medicare does not cover the Category A device itself because Category A (Experimental) devices do not satisfy the statutory requirement that Medicare pay for devices determined to be reasonable and necessary. Medicare may cover Category B (Non-experimental) devices, and associated routine costs of care, if they are considered reasonable and necessary and if all other applicable Medicare coverage requirements are met.

Under the current centralized review process, interested parties (such as study sponsors) that wish to seek Medicare coverage related to Category A or B IDE studies have a centralized point of contact for submission, review and determination of Medicare coverage IDE study requests. In order for CMS (or its designated entity) to determine if the Medicare coverage criteria are met, as described in our regulations, CMS (or its designated entity) must review documents submitted by interested parties or study sponsors. Such information submitted will be a FDA IDE approval letter, IDE study protocol, IRB approval letter, National Clinical Trials (NCT) number, and Supporting materials as needed. *Form Number:* CMS-10511 (OMB control number:

0938–1250); *Frequency*: Yearly; *Affected Public*: Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents*: 116; *Total Annual Responses*: 116; *Total Annual Hours*: 232. (For policy questions regarding this collection contact Xiufen Sui at 410–786–3136.)

2. *Type of Information Collection Request*: Reinstatement without change; *Title of Information Collection*: Medicare Coverage of Items and Services in FDA Investigational Device Exemption Clinical Studies—Revision of Medicare Coverage; *Use*: Section 1413 of the Affordable Care Act directs the Secretary of Health and Human Services to develop and provide to each state a single, streamlined application form that may be used to apply for coverage through a Marketplace and for APTC/ CSR, Medicaid, and CHIP (which we refer to collectively as insurance affordability programs). The application must be structured to maximize an applicant's ability to complete the form satisfactorily, taking into account the characteristics of individuals who may qualify for the programs by developing materials at appropriate literacy levels and ensuring accessibility.

45 CFR 155.405(a) provides more detail about the application that must be used by Marketplaces to determine eligibility and to collect information necessary for enrollment. Eligibility standards for the Marketplace are set forth in 45 CFR 155.305. The information will be required of each applicant upon initial application, with some subsequent information collections for the purposes of confirming accuracy of previous submissions and for changes in an applicant's circumstances. 42 CFR 435.907 and 457.330 establish the standards for state Medicaid and CHIP agencies related to the use of the application. CMS has designed a dynamic electronic application that will tailor the amount of data required from an applicant based on the applicant's circumstances and responses to particular questions in the FFM (please note SBM implementations may vary but the essence of the data collection must adhere to the same parameters). The paper version of the application will not be tailored in the same way but will require only the data necessary to determine eligibility.

Information collected by the Marketplace, Medicaid or CHIP agency will be used to determine eligibility for coverage through the Marketplace and insurance affordability programs (*i.e.*, Medicaid, CHIP, and APTC), and assist consumers in enrolling in a QHP if eligible. Applicants include anyone who

may be eligible for coverage through any of these programs. *Form Number*: CMS–10440 (OMB control number: 0938–1191); *Frequency*: Annually; *Affected Public*: Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents*: 4,884,000; *Total Annual Responses*: 4,884,000; *Total Annual Hours*: 2,205,614.

(For policy questions regarding this collection contact Anne Pesto at 410–786–3492.)

Dated: April 1, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–07314 Filed 4–5–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the National Advisory Council on Migrant Health

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Secretary's National Advisory Council on Migrant Health (NACMH) has scheduled a public meeting. Information about NACMH and the agenda for this meeting can be found on the NACMH website at: <https://bphc.hrsa.gov/qualityimprovement/strategicpartnerships/nacmh>.

DATES: May 31–June 3, 2022, 12:30–4:30 p.m. Eastern Time each day.

ADDRESSES: This meeting will be held virtually by webinar. Instructions for joining the meeting will be posted on the NACMH website 30 business days before the meeting date.

FOR FURTHER INFORMATION CONTACT: Esther Paul, NACMH, Designated Federal Official (DFO), Strategic Initiatives, Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857; 301–594–4300; or epaul@hrsa.gov.

SUPPLEMENTARY INFORMATION: NACMH advises, consults with, and makes recommendations to the Secretary of Health and Human Services on policy, program development, and other matters of significance concerning the activities under section 217 of the

Public Health Service Act, as amended (42 U.S.C. 218). Specifically, NACMH provides recommendations concerning policy related to the organization, operation, selection, and funding of migrant health centers, and other entities under grants and contracts under section 330 of the Public Health Service Act (42 U.S.C. 254b). NACMH meets twice each calendar year, or at the discretion of the DFO in consultation with the NACMH Chair.

During the May 31–June 3, 2022, meeting, NACMH will discuss topics and issues related to migratory and seasonal agricultural worker health. Agenda items are subject to change as priorities dictate. Refer to the NACMH website listed above for any updated information concerning the meeting.

Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to NACMH should be sent to Esther Paul, DFO, using the contact information above at least three business days prior to the meeting.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Esther Paul at the address and phone number listed above at least 10 business days prior to the meeting. Registration is required to attend the meeting. Registration and meeting attendance instructions will be posted on the NACMH website 30 business days prior to the meeting date.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–07313 Filed 4–5–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel: Small Business: Molecular and Cell Biology.

Date: April 19, 2022.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ronit I. Yarden, Ph.D., MHS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 904B, Bethesda, MD 20892, (202) 552-9939, yardenri@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: April 1, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022-07217 Filed 4-5-22; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at 240-276-0361.

Comments are invited on (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate

of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Data Resource Toolkit Protocol for the Crisis Counseling Assistance and Training Program (OMB No. 0930-0270) —Reinstatement

The SAMHSA Center for Mental Health Services (CMHS), as part of an interagency agreement with the Federal Emergency Management Agency (FEMA), provides a toolkit to be used for the purposes of collecting data on the Crisis Counseling Assistance and Training Program (CCP). The CCP provides supplemental funding to states, territories, and tribes for individual and community crisis intervention services after a provisionally declared disaster.

The CCP has provided disaster mental health services to millions of disaster survivors since its inception, and, with more than 30 years of accumulated expertise, it has become an important model for federal response to a variety of catastrophic events. Recent CCP grants have been issued for nearly all 50 states, 5 territories, and 1 tribe. These grants have helped survivors of disasters such as the coronavirus disease 2019 (COVID-19) pandemic in 2020 and 2021; Hurricanes Laura and Iota in 2020; and wildfires, severe storms, flooding, and earthquakes in 2019 through 2021. CCPs address the short-term mental health needs of communities primarily through (a) outreach and public education, (b) individual and group counseling, and (c) referral. Outreach and public education serve primarily to normalize disaster reactions and to engage people who may need further care. Crisis counseling assists survivors in coping with current stress and symptoms to return to pre-disaster functioning. Crisis counseling relies largely on “active listening,” and crisis counselors also provide psycho-education (especially about the nature of responses to trauma) and help clients build coping skills. Crisis counselors typically work with a single client once or a few times. Because crisis counseling is time-limited, referral is the third important function of CCPs. Counselors are expected to refer a survivor to formal treatment if he or she has developed a mental and/or substance use disorder or

is having difficulty in coping with his or her disaster reactions.

Data about services delivered and users of services are collected throughout the program period. The data are collected via the use of a toolkit that relies on standardized forms. At the program level, the data are entered quickly and easily into a cumulative database mainly through mobile data entry or paper forms (depending on resource availability) to yield summary tables for quarterly and final reports for the program. Mobile data entry allows for the data to be uploaded and linked to a national database that houses data collected across CCPs. This database provides SAMHSA CMHS and FEMA with a way of producing summary reports of services provided across all programs funded.

The components of the toolkit are listed and described below:

- *Encounter logs.* These forms document all services provided. The CCP requires crisis counselors to complete these logs. There are three types of encounter logs: (1) Individual/Family Crisis Counseling Services Encounter Log, (2) Group Encounter Log, and (3) Weekly Tally Sheet.

- *Individual/Family Crisis Counseling Services Encounter Log.* Crisis counseling is defined as an interaction that lasts at least 15 minutes and involves participant disclosure. This form is completed by the crisis counselor for each service recipient, defined as the person or people who actively participated in the session (that is, by participating in conversation), not someone who is merely present. One form may be completed for all family or household members who are actively engaged in the visit. Information collected includes demographics, service characteristics, risk factors, event reactions, and referral data.

- *Group Encounter Log.* This form is used to collect data on either a group crisis counseling encounter or a group public education encounter. The crisis counselor indicates in a checkbox the class of activities (that is, counseling or education). Information collected includes service characteristics, group identity and characteristics, and group activities.

- *Weekly Tally Sheet.* This form documents brief educational and supportive encounters not captured on any other form. Information collected includes service characteristics, daily tallies, and weekly totals for brief educational or supportive contacts, material distribution with no or minimal interaction, and social media activity.

- *Assessment and Referral Tools (ARTs)*. These tools—one for adults and one for children and youth—provide descriptive information about intensive users of services, defined as all individuals receiving a third or fifth individual crisis counseling visit or those who are continuing to experience severe post-disaster distress that may be affecting their ability to perform daily activities. This tool will typically be used beginning 3 months after the disaster and will be completed by the crisis counselor.

- *Participant Feedback Survey*. These surveys are completed by and collected from a sample of service recipients, not every recipient. Sampling is done on a biannual basis at 6 months and 1 year after the disaster. Information collected includes satisfaction with services, perceived improvements in coping and functioning, types of exposure, and event reactions.

- *Service Provider Feedback Form*. These surveys are completed by and collected from the CCP service providers anonymously at 6 months and 1 year after the disaster. The survey is coded on several program-level as well

as worker-level variables. However, the program is only identified and shared with program management if more than 10 individual workers complete the survey.

There are no changes to the Participant Feedback Survey and Service Provider Feedback Form since the last approval. Revisions to the Individual Encounter Log include rewording the category “adult (18–39 years)” to “young adult (18–29 years)” to clarify age categories; adding a question about recent move from another county to the United States; rewording selections for telephone calls to differentiate between incoming and outgoing calls; adding a location selection for virtual services; rewording risk category selections to incorporate stressors related to impacts of the COVID–19 pandemic (*e.g.*, underemployment, illness, virtual learning for children/youth, and physical distancing/social isolation); and adding risk category selections that address stressors including food insecurity, lack of access to reliable information, and lack of access to reliable transportation. For the Group

Encounter Log, changes include adding a location selection for virtual services and adding a question about recent immigration to the United States. For the Weekly Tally Sheet, changes include rewording the category for brief educational contact to include virtual contact, rewording the categories for phone calls to differentiate between incoming and outgoing calls, rewording the electronic interaction category to encompass more channels than just email (*e.g.*, text, chat, direct messages), rewording the materials mailed category to include emailed materials, rewording the social media messages category to clarify that it is only for posts to social media channels, and adding categories to better record reach and engagement of social media efforts. Minor changes to demographics, location of service, and risk categories were submitted for the Adult ART and Child/Youth ART to align the forms with the Individual/Family Crisis Counseling Services Encounter Log. The assessment tool sections of the ARTs were not changed. The estimates of the annualized burden hours are provided in Table 1.

TABLE 1—ANNUALIZED HOUR BURDEN ESTIMATES

Data collection instrument	Estimated number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Individual/Family Crisis Counseling Services Encounter Log	¹ 1,500	² 190	285,000	0.08	22,800
Group Encounter Log	³ 750	³ 33	24,750	0.05	1,238
Weekly Tally Sheet	¹ 1,500	⁴ 52	78,000	0.15	11,700
Assessment and Referral Tools	¹ 1,500	⁵ 14	⁶ 14,250	0.17	2,423
Participant Feedback Form	2,000	1	2,000	0.25	500
Service Provider Feedback Form	⁷ 750	1	750	0.41	308
Total	8,000	.....	404,750	.....	38,969

¹ This value (1,500) is based on an average of 50 full-time equivalent (FTE) crisis counselors per grant with an approximate average of 30 grants per year (*i.e.*, 50 × 30 = 1,500).

² On average, each FTE crisis counselor will complete 190 forms over the course of the grant.

³ On average, a pair of FTE crisis counselors completes one form per week (*i.e.*, two counselors completing one form = 750 crisis counselors) for 33 weeks.

⁴ The average length of a CCP grant is 52 weeks.

⁵ On average, each FTE crisis counselor will complete 14 Assessment Referral Tool forms over the course of the grant.

⁶ On average, 5 percent of the Individual/Family Crisis Counseling Services Encounter Logs completed will result in the use of this tool (*i.e.*, 285,000 logs × 5% = 14,250).

⁷ On average, 50 percent of service providers/crisis counselors may complete or use this tool.

Send comments to Carlos D. Graham, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–A, Rockville, Maryland 20857, or email a copy to Carlos.Graham@samhsa.hhs.gov. Written comments should be received by June 6, 2022.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2022–07294 Filed 4–5–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the

Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Project: Training and Technical Assistance (TTA) Program Monitoring

The Substance Abuse and Mental Health Administration’s (SAMHSA) will monitor program performance of its Training and Technical Assistance (TTA) programs. The TTAs disseminate current behavioral health services research from the National Institute on Drug Abuse, National Institute on

Alcohol Abuse and Alcoholism, National Institute of Mental Health, National Institute of Justice, and other sources, as well as other SAMHSA programs. To accomplish this, the TTA programs develop and update state-of-the-art, research-based curricula and professional development training.

The TTAs hold a variety of events: Technical assistance, meetings, trainings, and presentations. A TTA technical assistance event is defined as a jointly planned consultation generally involving a series of contacts between the TTA and an outside organization/institution during which the TTA provides expertise and gives direction toward resolving a problem or improving conditions. Technical assistance events can be categorized into universal, targeted, and intensive. Other TTA events such as meetings, training, presentations, strategic planning and learning collaboratives are utilized to support technical assistance. These events are TTA-sponsored or co-sponsored events in which a group of people representing one or more agencies other than the TTAs work cooperatively on a project, problem, and/or policy.

SAMHSA intends to use three (3) instruments for program monitoring of TTA events as well as ongoing quality improvement, which are described below.

1. *Event Description Form (EDF)*: The EDF collects event information. This instrument asks approximately 10 questions of TTA faculty/staff relating to the event focus and format. It allows the

TTAs and SAMHSA to track the number of events held (See Attachment 1).

2. *TTA Post Event Form*: The Post Event Form will be administered immediately following the event. It asks approximately 15 questions of each individual that participated in the event (Attachment 2). The instrument asks the participants to report on general demographic information (gender, race, sexual orientation, level of education, primary profession), principal employment setting, employment zip code, satisfaction with the event, if they expect the event to benefit them professionally, if they expect the event to change their practice and if they would recommend the event to a colleague.

3. *TTA Follow-up Form*: The Follow-up Form will be administered 60-days after all events that last a minimum of three (3) hours. The form will be administered to a minimum of 25% of participants who consent to participate in the follow-up process. The form asks about 14 questions (Attachment 3). The instrument asks the participants to report if the information provided in at the event benefited their professional development, will change their practice, if they will use the information in their future work, if information will be shared with colleagues, how the event supported their work responsibilities, how the TTA can improve the events, what other topics would participants like to see TTAs address and in what format.

The information collected on the TTA forms will assist SAMHSA in

documenting the numbers and types of participants in TTA events, describing the extent to which participants report improvement in their professional development, and which method is most effective in disseminating knowledge to various audiences. This type of information is crucial to support SAMHSA in complying with GPRA reporting requirements and will inform future development of knowledge dissemination activities.

SAMHSA sought to improve functionality and limit public burden through revision of the previously proposed TTA instruments based on stakeholder feedback. The following revisions have been made to the instruments since the 60-Day public comment period:

- Multiple linguistic revisions were made to improve clarity of instructions, descriptors and questions.
- The demographics section was updated to reflect revisions made to the other SAMHSA GPRA data collections.
- The unique identifier configuration has been revised to address concerns about respondent identification.

The revised TTA instruments reflect SAMHSA's desire to elicit pertinent Training and Technical Assistance program and participant data that can be used to not only guide future programs and practice, but to also respond to stakeholder, congressional, and agency enquiries.

The chart below summarizes the annualized burden for this project.

Type of respondent	Number of respondents	Responses per respondent	Total responses	Hours per response	Total annual burden hours	Hourly wage cost	Total hour cost
TTA Faculty/Staff:							
Event Description Form	2,000	1	2,000	.16	320	\$24.78	\$7,930
Meeting and presentations respondents:							
Post-Event Form	50,000	1	50,000	.16	8,000	24.78	198,240
Follow-up form	Meetings and presentations are usually less than 3 hours. Follow up forms will be used only for events longer than 3 hours.						
Technical Assistance and Training respondents:							
Post-Event Form	100,000	1	100,000	.16	16,000	24.78	396,480
Follow-up Form	25,000	1	25,000	.16	4,000	24.78	99,120
Total	177,000	1	177,000	.16	28,320	24.78	701,770

SUMMARY TABLE

Instruments	Number of respondents	Responses per respondents	Burden hours
TTA Event Description Form	2,000	1	320
TTA Post Event Form	150,000	1	24,000
TTA Follow up Form	25,000	1	4,000
Total	177,000	1	28,320

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2022-07293 Filed 4-5-22; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2022-0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports,

currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at <https://msc.fema.gov>.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

(Catalog of Federal Domestic Assistance No. 97.022, “Flood Insurance.”)

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Alabama:					
Madison (FEMA Docket No.: B-2226).	City of Huntsville (21-04-3964P).	The Honorable Thomas Battle, Jr., Mayor, City of Huntsville, 308 Fountain Circle, Huntsville, AL 35801.	City Hall, 308 Fountain Circle, Huntsville, AL 35801.	Mar. 28, 2022	010153
Madison (FEMA Docket No.: B-2226).	Unincorporated areas of Madison County (21-04-3964P).	The Honorable Dale Strong, Chairman, Madison County Commission, 100 North Side Square, Huntsville, AL 35801.	Madison County Engineering Department, 266-C Shields Road, Huntsville, AL 35811.	Mar. 28, 2022	010151
Shelby (FEMA Docket No.: B-2226).	Town of Harpersville (21-04-4025P).	The Honorable Theoanglo Perkins, Mayor, Town of Harpersville, 83 Town Hall Lane, Harpersville, AL 35078.	Town Hall, 83 Town Hall Lane, Harpersville, AL 35078.	Mar. 14, 2022	010293
Colorado:					
Douglas (FEMA Docket No.: B-2188).	Unincorporated areas of Douglas County (21-08-0569P).	The Honorable Lora A. Thomas, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Douglas County Public Works Department, Engineering Division, Castle Rock, CO 80104.	Mar. 18, 2022	080049
El Paso (FEMA Docket No.: B-2188).	City of Colorado Springs (21-08-0258P).	The Honorable John Suthers, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Suite 601, Colorado Springs, CO 80903.	Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs, CO 80910.	Mar. 16, 2022	080060

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
El Paso (FEMA Docket No.: B-2188).	Unincorporated areas of El Paso County (21-08-0258P).	The Honorable Stan VanderWerf, Chairman, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs, CO 80910.	Mar. 16, 2022	080059
Connecticut: Fairfield (FEMA Docket No.: B-2188).	Town of Greenwich (21-01-1019P).	The Honorable Fred Camillo, First Selectman, Town of Greenwich Board of Selectmen, 101 Field Point Road, Greenwich, CT 06830.	Planning and Zoning Department, 101 Field Point Road, Greenwich, CT 06830.	Mar. 9, 2022	090008
Florida:					
Collier (FEMA Docket No.: B-2188).	City of Naples (21-04-5172P).	The Honorable Teresa Heitmann, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	Building Department, 295 Riverside Circle, Naples, FL 34102.	Mar. 15, 2022	125130
Lee (FEMA Docket No.: B-2188).	City of Bonita Springs (21-04-5316P).	The Honorable Rick Steinmeyer, Mayor, City of Bonita Springs, 9101 Bonita Beach Road, Bonita Springs, FL 34135.	Community Development Department, 9220 Bonita Beach Road, Bonita Springs, FL 34135.	Mar. 18, 2022	120680
Lee (FEMA Docket No.: B-2188).	Town of Fort Myers Beach (21-04-5796P).	The Honorable Ray Murphy, Mayor, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Community Development Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Mar. 21, 2022	120673
Osceola (FEMA Docket No.: B-2188).	Unincorporated areas of Osceola County (20-04-3793P).	The Honorable Brandon Arrington, Chairman, Osceola County Commission, District 3, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Public Works Department, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Mar. 18, 2022	120189
Pasco (FEMA Docket No.: B-2188).	Unincorporated areas of Pasco County (21-04-2454P).	Mr. Dan Biles, Pasco County Administrator, 8731 Citizens Drive, New Port Richey, FL 34654.	Pasco County Administration Building, 8731 Citizens Drive, New Port Richey, FL 34654.	Mar. 17, 2022	120230
Sarasota (FEMA Docket No.: B-2188).	City of Sarasota (21-04-5236P).	The Honorable Hagen Brody, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	Development Services Department, 1565 1st Street, Sarasota, FL 34236.	Mar. 17, 2022	125150
Sumter (FEMA Docket No.: B-2188).	City of Wildwood (20-04-3751P).	The Honorable Ed Wolf, Mayor, City of Wildwood, 100 North Main Street, Wildwood, FL 34785.	Development Services Department, 100 North Main Street, Wildwood, FL 34785.	Mar. 18, 2022	120299
Sumter (FEMA Docket No.: B-2188).	Unincorporated areas of Sumter County (20-04-3751P).	The Honorable Garry Breeden, Chairman, Sumter County Board of Commissioners, 7375 Powell Road, Wildwood, FL 34785.	Sumter County Development Services Department, 7375 Powell Road, Wildwood, FL 34785.	Mar. 18, 2022	120296
Georgia:					
DeKalb (FEMA Docket No.: B-2214).	City of Brookhaven (21-04-2020P).	Mr. Christian Sigman, Manager, City of Brookhaven, 4362 Peachtree Road, Brookhaven, GA 30319.	City Hall, 4362 Peachtree Road, Brookhaven, GA 30319.	Mar. 18, 2022	135175
DeKalb (FEMA Docket No.: B-2214).	Unincorporated areas of DeKalb County (21-04-2020P).	The Honorable Michael L. Thurmond, Chief Executive Officer, DeKalb County, 1300 Commerce Drive, Decatur, GA 30030.	DeKalb County Public Works Department, Roads and Drainage Division, 727 Camp Road, Decatur, GA 30032.	Mar. 18, 2022	130065
Tift (FEMA Docket No.: B-2214).	City of Tifton (21-04-5139X).	The Honorable Julie Smith, Mayor, City of Tifton, 130 1st Street East, Tifton, GA 31794.	City Hall, 130 1st Street East, Tifton, GA 31794.	Mar. 10, 2022	130171
Tift (FEMA Docket No.: B-2214).	Unincorporated areas of Tift County (21-04-5139X).	Mr. Jim Carter, Manager, Tift County, Board of Commissioners, 225 North Tift Avenue, Room 204, Tifton, GA 31794.	Tift County Building Department, 225 North Tift Avenue, Tifton, GA 31794.	Mar. 10, 2022	130404
Massachusetts: Barnstable (FEMA Docket No.: B-2203).	Town of Chatham (21-01-1300P).	Ms. Jill Goldsmith, Manager, Town of Chatham, 549 Main Street, Chatham, MA 02633.	Community Development Department, 261 George Ryder Road, Chatham, MA 02633.	Mar. 11, 2022	250004
North Carolina: Surry (FEMA Docket No.: B-2203).	Unincorporated areas of Surry County (21-04-0390P).	The Honorable Mark Marion, Chairman, Surry County Board of Commissioners, P.O. Box 1467, Dobson, NC 27017.	Surry County Central Permitting Center, 122 Hamby Road, Dobson, NC 27017.	Mar. 14, 2022	370364
South Carolina:					
Jasper (FEMA Docket No.: B-2203).	City of Hardeeville (21-04-2468P).	Mr. Michael J. Czymbor, Manager, City of Hardeeville, 205 Main Street, Hardeeville, SC 29927.	Planning and Development Department, 205 Main Street, Hardeeville, SC 29927.	Mar. 10, 2022	450113
Jasper (FEMA Docket No.: B-2203).	Unincorporated areas of Jasper County (21-04-2468P).	The Honorable Barbara Clark, Chair, Jasper County Council, 358 3rd Avenue, Ridgeland, SC 29936.	Jasper County Planning and Building Department, 358 3rd Avenue, Ridgeland, SC 29936.	Mar. 10, 2022	450112
Tennessee:					
Maury (FEMA Docket No.: B-2188).	City of Spring Hill (20-04-3873P).	The Honorable Jim Hagaman, Mayor, City of Spring Hill, P.O. Box 789, Spring Hill, TN 37174.	Building Codes Department, 5000 Northfield Lane, Suite 520, Spring Hill, TN 37174.	Mar. 17, 2022	470278

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Maury (FEMA Docket No.: B-2188).	Unincorporated areas of Maury County (20-04-3873P).	The Honorable Andy Ogles, Mayor, Maury County, 41 Public Square, Columbia, TN 38401.	Maury County, Building Department, 5 Public Square, Columbia, TN 38401.	Mar. 17, 2022	470123
Texas: Bexar (FEMA Docket No.: B-2214).	Unincorporated areas of Bexar County (21-06-0768P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	Mar. 21, 2022	480035
Collin (FEMA Docket No.: B-2188).	City of Allen (21-06-1539P).	The Honorable Ken Fulk, Mayor, City of Allen, 305 Century Parkway, 1st Floor, Allen, TX 75013.	Engineering and Traffic Department, 305 Century Parkway, Allen, TX 75013.	Mar. 18, 2022	480131
Collin (FEMA Docket No.: B-2188).	City of Plano (21-06-1659P).	The Honorable John B. Muns, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074.	City Hall, 1520 K Avenue, Plano, TX 75074.	Mar. 21, 2022	480140
Comal (FEMA Docket No.: B-2188).	City of Bulverde (21-06-1446P).	The Honorable Bill Krawietz, Mayor, City of Bulverde, 30360 Cougar Bend, Bulverde, TX 78163.	City Hall, 30360 Cougar Bend, Bulverde, TX 78163.	Mar. 10, 2022	481681
Comal (FEMA Docket No.: B-2188).	Unincorporated areas of Comal County (21-06-1446P).	The Honorable Sherman Krause, Comal County Judge, 100 Main Plaza, New Braunfels, TX 78130.	Comal County Engineering Department, 195 David Jonas Drive, New Braunfels, TX 78132.	Mar. 10, 2022	481681
Kendall (FEMA Docket No.: B-2214).	Unincorporated areas of Kendall County (21-06-1445P).	The Honorable Darrel L. Lux, Kendall County Judge, 201 East San Antonio Avenue, Suite 122, Boerne, TX 78006.	Kendall County Engineer and Development Management Office, 201 East San Antonio Avenue, Suite 101, Boerne, TX 78006.	Mar. 16, 2022	480417
Utah: Washington (FEMA Docket No.: B-2188).	City of St. George (21-08-0603P).	The Honorable Michele Randall, Mayor, City of St. George, 175 East 200 North, St. George, UT 84770.	City Hall, 175 East 200 North, St. George, UT 84770.	Mar. 16, 2022	490177
Virginia: Independent City (FEMA Docket No.: B-2188).	City of Charlottesville (21-03-0301P).	Mr. Sam Sanders, Deputy Manager, City of Charlottesville, P.O. Box 911, Charlottesville, VA 22902.	Public Works Engineering Division, 610 East Market Street, Charlottesville, VA 22902.	Mar. 16, 2022	510033
Albemarle (FEMA Docket No.: B-2188).	Unincorporated areas of Albemarle County (21-03-0301P).	The Honorable Ned L. Galloway, Chairman, Albemarle County Board of Supervisors, 401 McIntire Road, Charlottesville, VA 22902.	Albemarle County Community Development Department, 401 McIntire Road, Charlottesville, VA 22902.	Mar. 16, 2022	510006
Henrico (FEMA Docket No.: B-2188).	Unincorporated areas of Henrico County (21-03-0879P).	Mr. John A. Vithoukias, Henrico County Manager, P.O. Box 90775, Henrico, VA 23273.	Henrico County Administration Annex Building, 4305 East Parham Road, Henrico, VA 23228.	Mar. 10, 2022	510077

[FR Doc. 2022-07299 Filed 4-5-22; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2022-0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of July 5, 2022 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at <https://msc.fema.gov> by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbabit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400

C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbabit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Michael M. Grimm,
Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Coffey County, Kansas and Incorporated Areas Docket No.: FEMA-B-2061	
City of Burlington	City Hall, 1013 North 4th Street, Burlington, KS 66839.
City of Gridley	City Hall, 503 Main Street, Gridley, KS 66852.
City of Lebo	City Hall, 9 East 4th Street, Lebo, KS 66856.
City of LeRoy	City Hall, 713 South Main Street, LeRoy, KS 66857.
City of Waverly	City Hall, 210 Pearson Avenue, Waverly, KS 66871.
Unincorporated Areas of Coffey County	Coffey County Courthouse, 110 South 6th Street, Burlington, KS 66839.
Stark County, North Dakota and Incorporated Areas Docket No.: FEMA-B-2037	
City of Belfield	City Hall, 208 Main Street North, Belfield, ND 58622.
Unincorporated Areas of Stark County	Stark County Courthouse, 51 3rd Street East, Dickinson, ND 58601.
Lancaster County, Virginia and Incorporated Areas Docket No.: FEMA-B-2003 and FEMA-B-2101	
Town of Kilmarnock	Town Hall Office, 1 North Main Street, Kilmarnock, VA 22482.
Unincorporated Areas of Lancaster County	Lancaster County Administration Building, Department of Planning and Land Use, 8311 Mary Ball Road, Lancaster, VA 22503.
Richmond County, Virginia and Incorporated Areas Docket No.: FEMA-B-2003 and FEMA-B-2101	
Town of Warsaw	Robert W. Municipal Building, 78 Belle Ville Lane, Warsaw, VA 22572.
Unincorporated Areas of Richmond County	Richmond County Administrator's Office, 101 Court Circle, Warsaw, VA 22572.

[FR Doc. 2022-07303 Filed 4-5-22; 8:45 am]

BILLING CODE 91110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2022-0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis

of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of July 19, 2022 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at <https://msc.fema.gov> by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472,

(202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the

new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Michael M. Grimm,
Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Coconino County, Arizona and Incorporated Areas Docket No.: FEMA-B-2113	
Unincorporated Areas of Coconino County	Community Development Department, 2500 North Fort Valley Road, Building 1, Flagstaff, AZ 86001.
Woodruff County, Arkansas and Incorporated Areas Docket No.: FEMA-B-2115	
City of Augusta	City Hall, 210 Main Street, Augusta, AR 72006.
City of Cotton Plant	City Hall, 110 Central Avenue, Cotton Plant, AR 72036.
City of McCrory	City Hall, 109 North Jackson Street, McCrory, AR 72101.
City of Patterson	City Hall, 123 South Main Street, Patterson, AR 72123.
Town of Hunter	Woodruff County Courthouse, 500 North 3rd Street, Augusta, AR 72006.
Unincorporated Areas of Woodruff County	Woodruff County Courthouse, 500 North 3rd Street, Augusta, AR 72006.
Sonoma County, California and Incorporated Areas Docket No.: FEMA-B-2058	
City of Rohnert Park	Development Services Department, City Hall, 130 Avram Avenue, Rohnert Park, CA 94928.
Unincorporated Areas of Sonoma County	Sonoma County Permit and Resource Management, 2550 Ventura Avenue, Santa Rosa, CA 95403.
Morris County, Kansas and Incorporated Areas Docket No.: FEMA-B-2135	
City of Council Grove	City Hall, 205 Union Street, Council Grove, KS 66846.
City of Dunlap	Morris County Courthouse, 501 West Main Street, Council Grove, KS 66846.
City of Parkerville	Morris County Courthouse, 501 West Main Street, Council Grove, KS 66846.
Unincorporated Areas of Morris County	Morris County Courthouse, 501 West Main Street, Council Grove, KS 66846.
Cheboygan County, Michigan (All Jurisdictions) Docket No.: FEMA-B-2114	
City of Cheboygan	City Hall, 403 North Huron Street, Cheboygan, MI 49721.
Township of Beaugrand	Beaugrand Township Hall, 1999 Old Mackinaw Road, Cheboygan, MI 49721.
Township of Benton	Benton Township Hall, 5012 Orchard Beach Road, Cheboygan, MI 49721.
Township of Mackinaw	Mackinaw Township Hall, 10595 Wallick Road, Mackinaw City, MI 49701.
Village of Mackinaw City	Village Hall, 102 South Huron Avenue, Mackinaw City, MI 49701.
St. Clair County, Michigan (All Jurisdictions) Docket No.: FEMA-B-1933	
Township of Clay	Clay Township Offices, 4710 Pointe Tremble Road, Algonac, MI 48001.
Township of Cottrellville	Township Hall, 7008 Marsh Road, Cottrellville, MI 48039.
Township of Ira	Ira Township Hall, 7085 Meldrum Road, Fair Haven, MI 48023.
St. Clair County, Michigan (All Jurisdictions) Docket No.: FEMA-B-2104	
Charter Township of Fort Gratiot	Municipal Center, 3720 Keewahdin Road, Fort Gratiot, MI 48059.
City of Port Huron	Municipal Office Center, 100 McMorrان Boulevard, Port Huron, MI 48060.
Township of Burtchville	Township Hall, 4000 Burtch Road, Burtchville, MI 48059.
Charter Township of Port Huron	Township Office, 3800 Lapeer Road, Port Huron, MI 48060.

Community	Community map repository address
Chatham County, North Carolina and Incorporated Areas Docket No.: FEMA-B-1616	
Unincorporated Areas of Chatham County	Chatham County Planning Department, 80-A East Street, Pittsboro, NC 27312.
Durham County, North Carolina and Incorporated Areas Docket No.: FEMA-B-1616	
City of Durham	City-County Inspections Department, 101 City Hall Plaza, Durham, NC 27701.
City of Raleigh	Engineering Services Department, One Exchange Plaza, Suite 706, Raleigh, NC 27601.
Town of Morrisville	Town Hall, 100 Town Hall Drive, Morrisville, NC 27560.
Unincorporated Areas of Durham County	Durham County, City-County Inspections Department, 101 City Hall Plaza, Durham, NC 27701.
Franklin County, North Carolina and Incorporated Areas Docket No.: FEMA-B-1616	
Unincorporated Areas of Franklin County	Franklin County Planning and Inspections, 215 East Nash Street, Louisburg, NC 27549.
Johnston County, North Carolina and Incorporated Areas Docket No.: FEMA-B-1445 and FEMA-B-1616	
Town of Clayton	Town Hall, 111 East 2nd Street, Clayton, NC 27520.
Unincorporated Areas of Johnston County	Johnston County Planning Department, 309 East Market Street, Smithfield, NC 27577.
Wake County, North Carolina and Incorporated Areas Docket No.: FEMA-B-1616 and FEMA-B-2102	
City of Raleigh	Engineering Services Department, One Exchange Plaza, Suite 706, Raleigh, NC 27601.
Town of Apex	Engineering Department, 73 Hunter Street, Apex, NC 27502.
Town of Cary	Stormwater Services Division, 316 North Academy Street, Cary, NC 27513.
Town of Fuquay-Varina	Engineering Department, 134 North Main Street, Fuquay-Varina, NC 27526.
Town of Garner	Engineering Department, 900 7th Avenue, Garner, NC 27529.
Town of Holly Springs	Engineering Department, 128 South Main Street, Holly Springs, NC 27540.
Town of Knightdale	Town Hall, 950 Steeple Square Court, Knightdale, NC 27545.
Town of Morrisville	Town Hall, 100 Town Hall Drive, Morrisville, NC 27560.
Town of Rolesville	Planning Department, 502 Southtown Circle, Rolesville, NC 27571.
Town of Wake Forest	Planning Department, 301 South Brooks Street, 3rd Floor, Wake Forest, NC 27587.
Town of Wendell	Planning Department, 15 East 4th Street, Wendell, NC 27591.
Town of Zebulon	Planning Department, 1003 North Arendell Avenue, Zebulon, NC 27597.
Unincorporated Areas of Wake County	Wake County Environmental Services Department, Waverly F. Atkins Office Building, 337 South Salisbury Street, Raleigh, NC 27601.

[FR Doc. 2022-07296 Filed 4-5-22; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2022-0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in

effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of June 15, 2022 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map

Repository address listed in the tables below and will be available online through the FEMA Map Service Center at <https://msc.fema.gov> by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency

(FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Michael M. Grimm,
Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Madison County, Georgia and Incorporated Areas Docket No.: FEMA-B-2110	
Madison County Unincorporated Areas	Madison County Government Courthouse, Building and Zoning Office, 91 Albany Avenue, Danielsville, GA 30633.
Oglethorpe County, Georgia and Incorporated Areas Docket No.: FEMA-B-2110	
City of Maxeys	Maxeys City Hall, 369 South Main Street, Stephens, GA 30667.
Unincorporated Areas of Oglethorpe County	Oglethorpe County Board of Commissioners Office, 105 Union Point Road, Lexington, GA 30648.
Hendricks County Indiana and Incorporated Areas Docket No.: FEMA-B-2104	
Town of Avon	Town Hall Offices, 6570 East US Highway 36, Avon, IN 46123.
Unincorporated Areas of Hendricks County	Hendricks County Government Center, 355 South Washington Street, Danville, IN 46122.
Monona County, Iowa and Incorporated Areas Docket No.: FEMA-B-2112	
City of Blencoe	City Hall, 413 Main Street, Blencoe, IA 51523.
City of Castana	City Hall, 103 3rd Street, Castana, IA 51010.
City of Mapleton	City Hall, 513 Main Street, Mapleton, IA 51034.
City of Moorhead	City Hall, 100 Oak Street, Moorhead, IA 51558.
City of Onawa	City Hall, 914 Diamond Street, Onawa, IA 51040.
City of Rodney	City Hall, 219 Main Street, Rodney, IA 51051.
City of Soldier	City Hall, 108 Oak Street, Soldier, IA 51572.
City of Turin	City Hall, 302 Highway 175, Turin, IA 51040.
City of Ute	City Hall, 130 East Main Street, Ute, IA 51060.
City of Whiting	City Hall, 605 Whittier Street, Whiting, IA 51063.
Omaha Tribe of Nebraska	Omaha Tribe of Nebraska Administration Building, 101 Main Street, Macy, NE 68039.
Unincorporated Areas of Monona County	Monona County Courthouse, 610 Iowa Avenue, Onawa, IA 51040.
Ellis County, Kansas and Incorporated Areas Docket No.: FEMA-B-2068	
City of Ellis	Municipal Offices, 815 Jefferson Street, Ellis, KS 67637.
City of Hays	City Hall, 1507 Main Street, Hays, KS 67601.
City of Schoenchen	Ellis County Administrative Center, 718 Main Street, Hays, KS 67601.
City of Victoria	City Hall, 1005 4th Street, Victoria, KS 67671.
Unincorporated Areas of Ellis County	Ellis County Administrative Center, 718 Main Street, Hays, KS 67601.
Lyon County, Kansas and Incorporated Areas Docket No.: FEMA-B-2068	
City of Allen	City Hall, 4 West 5th Street, Allen, KS 66833.
City of Americus	City Hall, 604 Main Street, Americus, KS 66835.
City of Emporia	City Hall, 111 East 6th Avenue, Emporia, KS 66801.
City of Neosho Rapids	City Hall, 238 North Main Street, Neosho Rapids, KS 66864.

Community	Community map repository address
City of Olpe	City Hall, 102 Westphalia Street, Olpe, KS 66865.
City of Reading	City Hall, 613 1st Street, Reading, KS 66868.
Unincorporated Areas of Lyon County	Lyon County Courthouse, 430 Commercial Street, Emporia, KS 66801.

Arenac County, Michigan (All Jurisdictions)
Docket No.: FEMA-B-2075

City of Au Gres	City Hall, 124 West Huron Road, Au Gres, MI 48703.
Township of Arenac	Arenac Township Hall, 2596 Arenac State Road, Standish, MI 48658.
Township of Au Gres	Township Hall, 1865 South Swenson Road, Au Gres, MI 48703.
Township of Sims	Sims Township Office, 4489 East Huron Road, Au Gres, MI 48703.
Township of Standish	Township Hall, 4997 Arenac State Road, Standish, MI 48658.
Township of Whitney	Whitney Township Hall, 1515 North Huron Road, Tawas City, MI 48763.

Iosco County, Michigan (All Jurisdictions)
Docket No.: FEMA-B-2075

City of East Tawas	East Tawas Community Center, 760 Newman Street, East Tawas, MI 48730.
City of Tawas City	City Hall, 550 West Lake Street, Tawas City, MI 48763.
Township of Alabaster	Alabaster Township Hall, 1716 South U.S. 23, Tawas City, MI 48763.
Township of Au Sable	Township Hall, 4420 North U.S. 23, Au Sable, MI 48750.
Township of Baldwin	Baldwin Township Hall, 1119 Monument Road, Tawas City, MI 48763.
Township of Oscoda	Iosco County Public Safety Building, 1808 North U.S. 23, Oscoda, MI 48750.

Monmouth County, New Jersey (All Jurisdictions)
Docket No.: FEMA-B-1471

Borough of Deal	Borough Hall, 190 Norwood Avenue, Deal, NJ 07723.
Borough of Rumson	Municipal Building, Zoning Department, 80 East River Road, Rumson, NJ 07760.
Township of Neptune	Township Hall, Construction Department, 25 Neptune Boulevard, Neptune, NJ 07753.

Craven County, North Carolina and Incorporated Areas
Docket No.: FEMA-B-1718

Unincorporated Areas of Craven County	Craven County GIS and Mapping Department, 226 Pollock Street, New Bern, NC 28560.
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Hyde County, North Carolina and Incorporated Areas
Docket No.: FEMA-B-1718; FEMA B-2072

Unincorporated Areas of Hyde County	Hyde County Inspections Department, 30 Oyster Creek Road, Swan Quarter, NC 27885.
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Jones County, North Carolina and Incorporated Areas
Docket No.: FEMA-B-1718; FEMA B-2077

Town of Pollocksville	Town Hall, 314 Main Street, Pollocksville, NC 28573.
Unincorporated Areas of Jones County	Jones County Government Office, 418 Highway 58 North, Trenton, NC 28585.

Tyrrell County, North Carolina and Incorporated Areas
Docket No.: FEMA-B-1718; FEMA B-2077

Town of Columbia	Municipal Building, 103 Main Street, Columbia, NC 27925.
Unincorporated Areas of Tyrrell County	Tyrrell County Planning Department, 108 South Water Street, Columbia, NC 27925.

DEPARTMENT OF THE INTERIOR**National Park Service**

[NPS–WASO–NAGPRA–NPS0033674;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Oakland Museum of California, Oakland, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Oakland Museum of California (Oakland Museum), in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of an object of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the Oakland Museum. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the Oakland Museum at the address in this notice by May 6, 2022.

FOR FURTHER INFORMATION CONTACT: Anna Bunting, Registrar, Oakland Museum of California, 1000 Oak Street, Oakland, CA 94607, telephone (510) 318–8493, email nagpra@museumca.org.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the Oakland Museum of California, Oakland, CA, that meets the definition of an object of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

Between 1897 and 1928, one cultural item was removed from Wrangell, AK, by Fred W. Carlyon, a local shop owner, and his sister, Anna Vaughn. Carlyon and Vaughn collected the *Aankháawu Woodazkaa*, or Speaker's Staff, during their time in Wrangell in the late 19th and early 20th centuries. Subsequently, the Speaker's Staff passed from the collectors to Miss Vaughn's daughter, Dorothy K. Haberman. In 1959, Mrs. Haberman donated the staff to the Oakland Museum of California (catalog number H4153.2). The object of cultural patrimony is an *Aankháawu Woodazkaa*, or Speaker's Staff. It is approximately 58 inches long and is made of cedar. The body displays carved animal figures. The object is topped with a bird form, below which is a human figure with a potlatch hat and abalone inlay for the eyes.

The area of Wrangell, AK, where this object originated, is the home of the *Shx'at Kwaan* (Wrangell People), who collectively are also known as the *Shx'at Kwaan Federation* and the Tlingit people of Southeastern Alaska. Today, the *Shx'at Kwaan* (Wrangell People) is represented by the Central Council of the Tlingit & Haida Indian Tribes.

The *Aankháawu Woodazkaa*, or Speaker's Staff, is identified in museum records as *Kadashan's Staff*. Chief Kadashan was a leader of the *Kaasx 'agweidi*, the Tlingit Raven clan in Wrangell, AK. Information provided during tribal consultation, as well as museum records and academic sources, including a historic photograph of the staff while it was still among the Tlingit in Wrangell, all support a Tlingit cultural affiliation for this object. According to information provided during tribal consultation, the *Aankháawu Woodazkaa*, or Speaker's Staff, is a particularly important item of chiefly regalia, as it was only brought out on occasions of great importance to command, unify, and represent clan members. Additional information provided during tribal consultation also indicates that the *Aankháawu Woodazkaa*, or Speaker's Staff, is a clan-owned object brought out in ceremonies by a clan-appointed caretaker, and that it could not be alienated without the consent of the entire clan.

Determinations Made by the Oakland Museum of California

Officials of the Oakland Museum of California have determined that:

- Pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above

has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and the Central Council of the Tlingit & Haida Indian Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Anna Bunting, Registrar, Oakland Museum of California, 1000 Oak Street, Oakland, CA 94607, telephone (510) 318–8493, email nagpra@museumca.org, by May 6, 2022. After that date, if no additional claimants have come forward, transfer of control of the object of cultural patrimony to the Central Council of the Tlingit & Haida Indian Tribes may proceed.

The Oakland Museum of California is responsible for notifying the Central Council of the Tlingit & Haida Indian Tribes that this notice has been published.

Dated: March 30, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–07170 Filed 4–5–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR**National Park Service**

[NPS–WASO–NAGPRA–NPS0033678;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: American Numismatic Society, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The American Numismatic Society (the "Museum"), in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of an unassociated funerary object. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the Museum. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants,

Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the Museum at the address in this notice by May 6, 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Gilles Bransbourg, Executive Director, American Numismatic Society, 75 Varick Street, 11th Floor, New York, NY 10013, telephone (212) 571-4470, email gbransbourg@numismatics.org.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the American Numismatic Society, New York, NY, that meets the definition of an unassociated funerary object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

In or around 1883, one cultural item was removed from a Skidi Pawnee burial site in Nance County, NE. The item was acquired by Orlando Thompson. Thompson was accompanied by his niece Mary Ellsworth (née Thompson), to whom he presented the item. Some years later, Ms. Ellsworth loaned the item to the Nebraska State Historical Society, before selling it to J. Sanford Saltus, who purchased the item on behalf of the Museum in 1922.

The one unassociated funerary object is a silver medal bearing the inscription "TO THE BRAVEST OF THE BRAVE," and depicting an episode in which Chief Petalesharo of the Skidi Pawnee rescued a Comanche woman from human sacrifice as part of the Morning Star ceremony. The episode received national attention. When Chief Petalesharo visited Washington, DC, in 1821, the female students of Miss White's Seminary reportedly commissioned a medal in his honor and gifted it to him.

The Skidi Pawnee, of which Chief Petalesharo was a member, today constitute a band of the Pawnee Nation of Oklahoma. Andrew Knife Chief ("Knife Chief") contacted the Museum and identified himself as a lineal descendant of Chief Petalesharo, based on genealogical records and by means of the traditional kinship system of the Pawnee Nation. In a letter dated January 11, 2022, the Pawnee Nation of Oklahoma informed the Museum that the Pawnee Nation of Oklahoma, including the Nasharo Council and Skidi Band, fully supported Mr. Knife Chief's claim, as he is considered a lineal descendant of Chief Petalesharo.

Determinations Made by the American Numismatic Society

Officials of the American Numismatic Society have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the one cultural item described above is reasonably believed to have been placed with or near the human remains of Chief Petalesharo of the Skidi Pawnee at the time of death or later as part of the death rite or ceremony of the Skidi Pawnee and is believed, by a preponderance of the evidence, to have been removed from the burial site of Chief Petalesharo.

- Pursuant to 43 CFR 10.14(b), Andrew Knife Chief is a lineal descendant of Chief Petalesharo, based on genealogical records and by means of the traditional kinship system of the Pawnee Nation of Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Dr. Gilles Bransbourg, Executive Director, American Numismatic Society, 75 Varick Street, 11th Floor, New York, NY 10013, telephone (212) 571-4470, email gbransbourg@numismatics.org, by May 6, 2022. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary object to Andrew Knife Chief may proceed.

The Museum is responsible for notifying Andrew Knife Chief and the Pawnee Nation of Oklahoma that this notice has been published.

Dated: March 30, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022-07168 Filed 4-5-22; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0033677; PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: Nebraska State Historical Society DBA History Nebraska, Lincoln, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: History Nebraska has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to History Nebraska. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to History Nebraska at the address in this notice by May 6, 2022.

FOR FURTHER INFORMATION CONTACT: Dave Williams, State Archeologist, History Nebraska, 5050 North 32nd Street, Lincoln, NE 68504, telephone (402) 219-2759, email dave.williams@nebraska.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of History Nebraska, Lincoln, NE. The human remains were removed from Dakota County, NE.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by History Nebraska professional staff in consultation with representatives of the Omaha Tribe of Nebraska.

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from archeological site 25DK5 (Big Village of the Omaha) near Homer, NE, by Elmer E. Blackman. Blackman, an early 20th century History Nebraska archeologist, collected a skull fragment. The human remains belong to an adult of unknown sex. No known individual was identified. No associated funerary objects are present.

Big Village was occupied intermittently by the Omaha Tribe of Nebraska from the 1790s to the 1830s.

Determinations Made by History Nebraska

Officials of History Nebraska have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Omaha Tribe of Nebraska.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dave Williams, State Archeologist, History Nebraska, 5050 North 32nd Street, Lincoln, NE 68504, telephone (402) 219-2759, email dave.williams@nebraska.gov, by May 6, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Omaha Tribe of Nebraska may proceed.

History Nebraska is responsible for notifying the Omaha Tribe of Nebraska that this notice has been published.

Dated: March 30, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022-07173 Filed 4-5-22; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0033673;
PPWOCRADNO-PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: The Children's Museum of Indianapolis, Indianapolis, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Children's Museum of Indianapolis, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of sacred objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to The Children's Museum of Indianapolis. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to The Children's Museum of Indianapolis at the address in this notice by May 6, 2022.

FOR FURTHER INFORMATION CONTACT:

Jennifer Noffze, The Children's Museum of Indianapolis, 3000 N Meridian Street, Indianapolis, IN 46208, telephone (317) 334-3722, email jenn@childrensmuseum.org.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of The Children's Museum of Indianapolis, Indianapolis, IN, that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

The six sacred objects are False Face masks. Three of the False Face masks were acquired from the Museum of the American Indian in New York in 1967 and are attributed to the Iroquois from the Onondaga reservation. Two masks were purchased in 1976 and are attributed to the Iroquois. One mask was donated in 1985 and was attributed by the donor to the Iroquois. During consultation with The Children's Museum of Indianapolis, the Onondaga Nation confirmed the cultural affiliation of these masks and their identity as sacred objects.

Determinations Made by The Children's Museum of Indianapolis

Officials of The Children's Museum of Indianapolis have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the six cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and the Onondaga Nation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Jennifer Noffze, The Children's Museum of Indianapolis, 3000 N Meridian Street, Indianapolis, IN 46208, telephone (317) 334-3722, email jenn@childrensmuseum.org, by May 6, 2022. After that date, if no additional claimants have come forward, transfer of control of the sacred objects to the Onondaga Nation may proceed.

The Children's Museum of Indianapolis is responsible for notifying the Onondaga Nation that this notice has been published.

Dated: March 30, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022-07169 Filed 4-5-22; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF JUSTICE**Drug Enforcement Administration**

[Docket No. DEA 950]

**Importer of Controlled Substances
Application: Meridian Medical
Technologies****AGENCY:** Drug Enforcement Administration, Justice.**ACTION:** Notice of application.**SUMMARY:** Meridian Medical Technologies has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before May 6, 2022. Such persons may also file a written request for a hearing on the application on or before May 6, 2022.**ADDRESSES:** The DEA requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on December 6, 2021, Meridian Medical Technologies, 2555 Hermelin Drive, Saint Louis, Missouri 63144, applied to be registered as an

importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Morphine	9300	II

The company manufactures a product containing morphine in the United States. The company exports this product to customers around the world. The company has been asked to ensure that its product, which is sold to European customers, meets the standards established by the European Pharmacopeia, administered by the Directorate for the quality of Medicines (EDQM). In order to ensure that its product will meet European specifications, the company seeks to import morphine supplied by EDQM for use as reference standards. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,*Deputy Assistant Administrator.*

[FR Doc. 2022-07207 Filed 4-5-22; 8:45 am]

BILLING CODE P**DEPARTMENT OF JUSTICE****Parole Commission****Sunshine Act Meeting****DATE AND TIME:** Thursday April 14, 2022, at 2 p.m.**PLACE:** U.S. Parole Commission, 90 K Street NE, 3rd Floor, Washington, DC.**STATUS:** Open.**MATTERS TO BE CONSIDERED:**

1. Approval of October 14, 2021 Quarterly Meeting minutes.
2. Verbal Pandemic Updates since October Quarterly Meeting from the Acting Chairman, Commissioner, Acting Chief of Staff/Case Operations Administrator, Case Services Administrator, Executive Officer, and General Counsel.
3. Verbal update from Jordana Cunningham regarding RSAT and other treatment programs being utilized.
4. Update on the PAVER program.

CONTACT PERSON FOR MORE INFORMATION: Jacquelyn Graham, Staff Assistant to the Chairman, U.S. Parole Commission, 90

K Street NE, 3rd Floor, Washington, DC 20530, (202) 346-7010.

Dated: April 4, 2022.

Patricia K. Cushwa,*Chairman (Acting), U.S. Parole Commission.*

[FR Doc. 2022-07441 Filed 4-4-22; 4:15 pm]

BILLING CODE 4410-31-P**DEPARTMENT OF LABOR****Employment and Training
Administration****Workforce Innovation and Opportunity
Act (WIOA) 2021 Lower Living
Standard Income Level (LLSIL)****AGENCY:** Employment and Training Administration (ETA), Labor.**ACTION:** Notice.**SUMMARY:** Title I of WIOA requires the U.S. Secretary of Labor (Secretary) to update and publish the LLSIL tables annually, for uses described in the law (including determining eligibility for youth). WIOA defines the term "low-income individual" as (*inter alia*) one whose total family annual income does not exceed the higher level of the poverty line or 70 percent of the LLSIL. This issuance provides the Secretary's annual LLSIL for 2022 and references the current 2022 Health and Human Services "Poverty Guidelines."**DATES:** This notice is effective *April 6, 2022*.**FOR FURTHER INFORMATION CONTACT:**

Contact Samuel Wright, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room C-4526, Washington, DC 20210; Telephone: 202-693-2870; Fax: 202-693-3015 (these are not toll-free numbers); Email address: wright.samuel.e@dol.gov. Individuals with hearing or speech impairments may access the telephone number above via Text Telephone (TTY/TDD) by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD).

Federal Youth Employment Program Information: Sara Hastings, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room N-4464, Washington, DC 20210; Telephone: 202-693-3599; Email: hastings.sara@dol.gov. Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The purpose of WIOA is to provide

workforce investment activities through statewide and local workforce investment systems that increase the employment, retention, and earnings of participants. WIOA programs are intended to increase the occupational skill attainment by participants and the quality of the workforce, thereby reducing welfare dependency and enhancing the productivity and competitiveness of the Nation.

LLSIL is used for several purposes under the WIOA. Specifically, WIOA Section 3(36) defines the term “low-income individual” for eligibility purposes, and Sections 127(b)(2)(C) and 132(b)(1)(B)(IV) define the terms “disadvantaged youth” and “disadvantaged adult” in terms of the poverty line or LLSIL for State formula allotments. The Governor and state and local workforce development boards use the LLSIL for determining eligibility for youth and adults for certain services. ETA encourages Governors and state/local boards to consult the WIOA Final Rule and ETA guidance for more specific guidance in applying LLSIL to program requirements. The U.S. Department of Health and Human Services (HHS) published the most current poverty-level guidelines in the **Federal Register**, January 21, 2022. The HHS 2022 Poverty guidelines may also be found on the internet at www.federalregister.gov/documents/2022/01/21/2022-01166/annual-update-of-the-hhs-poverty-guidelines. ETA will have the 2022 LLSIL and the HHS Poverty guidelines available on its website at www.dol.gov/agencies/eta/llsil.

WIOA Section 3(36)(B) defines LLSIL as “that income level (adjusted for regional, metropolitan, urban and rural differences and family size) determined annually by the Secretary of Labor based on the most recent lower living family budget issued by the Secretary.” The most recent lower living family budget was issued by the Secretary in fall 1981. The four-person urban family budget estimates, previously published by the U.S. Bureau of Labor Statistics (BLS), provided the basis for the Secretary to determine the LLSIL. BLS terminated the four-person family budget series in 1982, after publication of the fall 1981 estimates. Currently, BLS provides data to ETA, which ETA then uses to develop the LLSIL tables, as provided in the Appendices to this **Federal Register** notice.

This notice updates the LLSIL to reflect cost of living increases for 2021, by calculating the percentage change in the most recent 2021 Consumer Price Index for All Urban Consumers (CPI-U) for an area to the 2021 CPI-U, and then

applying this calculation to each of the previously published 2021 LLSIL figures. The 2022 LLSIL tables will be available on the ETA LLSIL website at www.dol.gov/agencies/eta/llsil.

The website contains updated figures for a four-person family in Table 1, listed by region for both metropolitan and non-metropolitan areas. Incomes in all of the tables are rounded up to the nearest dollar. Since program eligibility for “low-income individuals,” “disadvantaged adults,” and “disadvantaged youth” may be determined by family income at 70 percent of the LLSIL, pursuant to WIOA Section 3(36)(A)(ii) and Section 3(36)(B), respectively, those figures are listed as well.

I. Jurisdictions

Jurisdictions included in the various regions, based generally on the Census Regions of the U.S. Department of Commerce, are as follows:

A. Northeast

Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the U.S. Virgin Islands.

B. Midwest

Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

C. South

Alabama, American Samoa, Arkansas, Delaware, District of Columbia, Florida, Georgia, Northern Marianas, Oklahoma, Palau, Puerto Rico, South Carolina, Kentucky, Louisiana, Marshall Islands, Maryland, Micronesia, Mississippi, North Carolina, Tennessee, Texas, Virginia, and West Virginia.

D. West

Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Additionally, the LLSIL Excel file provides separate figures for Alaska, Hawaii, and Guam.

Data for selected Metropolitan Statistical Areas (MSAs) are also available. These are based on annual CPI-U changes for a 12-month period ending in December 2021. The updated LLSIL figures for these MSAs and 70 percent of LLSIL are also available in the LLSIL Excel file.

The LLSIL Excel file also lists each of the various figures at 70 percent of the updated 2022 LLSIL for family sizes of one to six persons. Please note, for families larger than six persons, an amount equal to the difference between

the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding 70 percent of the LLSIL figure, the figure is shaded.

The LLSIL Excel file also indicates 100 percent of LLSIL for family sizes of one to six, and is used to determine self-sufficiency as noted at Section 3(36)(A)(ii) and Section 3(36)(B) of WIOA.

II. Use of These Data

Governors should designate the appropriate LLSILs for use within the State using the LLSIL Excel files on the website. The Governor’s designation may be provided by disseminating information on MSAs and metropolitan and non-metropolitan areas within the state or it may involve further calculations. An area can be part of multiple LLSIL geographies. For example, an area in the State of New Jersey may have four or more LLSIL figures. All cities, towns, and counties that are part of a metro area in New Jersey are a part of the Northeast metropolitan; some of these areas can also be a portion of the New York City MSA. New Jersey also has areas that are part of the Philadelphia MSA, a less populated area in New Jersey may be a part of the Northeast non-metropolitan. If a workforce investment area includes areas that would be covered by more than one LLSIL figure, the Governor may determine which is to be used.

A state’s policies and measures for the workforce investment system shall be accepted by the Secretary to the extent that they are consistent with WIOA and WIOA regulations.

III. Disclaimer on Statistical Uses

It should be noted that publication of these figures is only for the purpose of meeting the requirements specified by WIOA as defined in the law and regulations. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series were terminated by BLS in 1982. The CPI-U adjustments used to update LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL, but are not in the CPI-U. Thus, these figures should not be used for any statistical purposes, and are valid only for those purposes under

WIOA as defined in the law and regulations.

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022-07238 Filed 4-5-22; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, "Occupational Code Assignment." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by June 6, 2022.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Lauren Fairley by telephone at (202) 693-3731 (this is not a toll-free number), TTY 1-877-889-5627 (this is not a toll-free number), by email at fairley.lauren@dol.gov, or by accessing: <http://www.onetcenter.org/ombclearance.html>.

Submit written comments about, or requests for a copy of, this ICR by email: fairley.lauren@dol.gov; or by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, 201 Constitution Ave. NW, C-4510, Washington, DC 20210; or by fax (202) 693-3015.

FOR FURTHER INFORMATION CONTACT: Contact Lauren Fairley by telephone at (202) 693-3731 (this is not a toll-free number) or by email at fairley.lauren@dol.gov.

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public

and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

I. Background

The Occupational Code Assignment form (ETA 741) was developed as a public service to the users of the Occupational Information Network (O*NET), in an effort to help them in obtaining occupational codes and titles for jobs that they are unable to locate in O*NET. The O*NET system classifies nearly all jobs in the United States economy. However, new specializations are constantly evolving and emerging. The use of the OCA is voluntary and is provided: (1) As a uniform format to the public and private sector to submit information in order to receive assistance in identifying an occupational code; (2) to assist the O*NET system in identifying potential occupations that may need to be included in future O*NET data collection efforts; and (3) to provide input to a database of alternative (lay) titles to facilitate searches for occupational information in the O*NET websites including O*NET OnLine (<http://online.onetcenter.org>), My Next Move (www.MyNextMove.gov), My Next Move for Veterans (www.MyNextMove.org/vets), O*NET Code Connector (www.onetcodeconnector.org), as well as CareerOneStop (www.careeronestop.org).

The OCA process is designed to help the occupational information user relate an occupational specialty or a job title to an occupational code and title within the framework of the 2018 Standard Occupational Classification (SOC) based O*NET system. The O*NET-SOC system consists of a database that organizes the work done by individuals into approximately 1,000 occupational categories. In addition, O*NET occupations have associated data on the importance and level of a range of occupational characteristics and requirements, including Knowledge, Skills, Abilities, Tasks and Work Activities. Since the O*NET-SOC system is based on the 2018 SOC system, identifying an O*NET-SOC code and title also facilitates linkage to national, state, and local occupational employment and wage estimates.

Section 308 of the Workforce Innovation and Opportunity Act authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1205-0137.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (e.g., permitting electronic submission of responses).

Agency: DOL-ETA.

Type of Review: Extension without changes.

Title of Collection: Occupational Code Assignment.

Form: ETA-741.

OMB Control Number: 1205-0137.

Affected Public: Federal government, state and local government, business or other for-profit/non-profit institutions, and individuals.

Estimated Number of Respondents: 60.

Frequency: On Occasion.

Total Estimated Annual Responses: 60.

Estimated Average Time per Response: .6 hours.

Estimated Total Annual Burden Hours: 36 hours.

Total Estimated Annual Other Cost Burden: \$0.

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022-07237 Filed 4-5-22; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, "Work Application/Job Order Recordkeeping." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by June 6, 2022.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Randy Painter by telephone at 202-693-3979 (this is not a toll-free number), TTY 1-877-889-5627 (this is not a toll-free number), or by email at painter.randy@dol.gov.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, 200 Constitution Ave. NW, Washington, DC 20210; by email: painter.randy@dol.gov or by fax 202-693-3817.

FOR FURTHER INFORMATION CONTACT: Contact Randy Painter by telephone at 202-693-3979 (this is not a toll-free number) or by email at painter.randy@dol.gov.

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: The Department of Labor, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

This ICR collects the required information for work applications and job order recordkeeping. The exact information collected is determined by the State. At a minimum, the information to be collected is that which enables the State to comply with regulations under 20 CFR 652 and the Wagner-Peyser Act.

In March 2019, OMB approved the ICR, OMB control number 1205-0001, that allows the Department of Labor and Department of Education (the Departments) to collect information from States pertaining to work applications and job orders and their retention of that data. OMB granted approval for the ICR through September of 2022. 29 U.S.C. 49 (The Wagner-Peyser Act) authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate

consideration, comments should mention OMB control number 1205-0001.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (e.g., permitting electronic submission of responses).

Agency: DOL-ETA.

Type of Review: Extension without changes.

Title of Collection: Work Application/Job Order Recordkeeping.

Form: N/A.

OMB Control Number: 1205-0001.

Affected Public: State, Local, and Tribal Governments.

Estimated Number of Respondents: 52.

Frequency: Annually.

Total Estimated Annual Responses: 52.

Estimated Average Time per Response: 8 hours.

Estimated Total Annual Burden Hours: 416 hours.

Total Estimated Annual Other Cost Burden: \$0.

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022-07239 Filed 4-5-22; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Occupational Safety and Health Administration**

[Docket No. OSHA–2018–0005]

Healthcare Worker Whistleblower Stakeholder Meeting**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Notice of public meeting.**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is announcing a public meeting to solicit comments and suggestions from stakeholders on issues facing the agency in the administration of the whistleblower laws it enforces.**DATES:** The public meeting will be held on May 18, 2022, from 1:00 p.m. to 4:00 p.m., ET via telephone and virtually via Zoom. Persons interested in attending the meeting must register by May 11, 2022. In addition, comments relating to the “Scope of Meeting” section of this document must be submitted by May 11, 2022.**ADDRESSES:**

Electronically: You may submit materials, including attachments, electronically at <http://www.regulations.gov>, which is the Federal eRulemaking portal. Follow the on-line instructions for submissions. All comments should be identified with Docket No. OSHA–2018–0005.

Registration to Attend and/or to Participate in the Meeting: If you wish to attend the public meeting, make an oral presentation at the meeting, or participate in the meeting, you must register using this link: <https://www.eventbrite.com/e/healthcare-worker-whistleblower-stakeholder-meeting-tickets-292455832267> or this link for registration in Spanish <https://www.eventbrite.com/e/entradas-reunion-para-partes-interesadas-sobre-los-denunciantes-que-son-trabajadores-293378431787> by close of business on May 11, 2022. Each participant will be allowed to speak for up to 5 minutes. If there is extra time at the end of the meeting, participants may be given extra time to speak. There is no fee to register for the public meeting. After reviewing the requests to present, OSHA will contact each participant prior to the meeting to inform them of the speaking order. We will provide Spanish-language translation.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: meilinger.francis2@dol.gov.

For general information: Mr. Anthony Rosa, Deputy Director, OSHA Directorate of Whistleblower Protection Programs, U.S. Department of Labor; telephone: (202) 693–2199; email: osha.dwpp@dol.gov.

SUPPLEMENTARY INFORMATION:**A. Scope of Meeting**

OSHA is interested in obtaining information from the public on key issues facing the agency’s whistleblower program. This meeting is the ninth in a series of meetings requesting public input on this program. The agency is seeking suggestions on how it can improve the program, particularly where healthcare workers are concerned. Please note that the agency does not have the authority to change the statutory language and requirements of the laws it enforces. In particular, the agency invites input on the following:

1. How can OSHA deliver better whistleblower customer service?
2. What kind of assistance can OSHA provide to help explain the agency’s whistleblower laws to employees and employers?
3. What can OSHA do to ensure that healthcare workers are protected from retaliation for raising concerns related to COVID–19?

B. Request for Comments

Regardless of attendance at the public meeting, interested persons may submit written or electronic comments (see **ADDRESSES** above). Electronic comments include recorded oral comments. Comments may be submitted in any language. Submit a single copy of electronic comments or two paper copies of any mailed comments. To permit time for interested persons to submit data, information, or views on the issues in the “Scope of Meeting” section of this notice, please submit comments by May 11, 2022, and include Docket No. OSHA–2018–0005. If you have questions regarding how to submit comments, please contact osha.dwpp@dol.gov or 202–693–2199.

C. Access to the Public Record

Electronic copies of this **Federal Register** notice are available at: <http://www.regulations.gov>. This notice, as well as news releases and other relevant information, is also available on the Directorate of Whistleblower Protection Programs’ web page at: <http://www.whistleblowers.gov>.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary for Occupational Safety and Health, authorized the preparation of this notice under the authority granted

by Section 11(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(c)); Secretary’s Order 08–2020 (May 15, 2020).

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–07250 Filed 4–5–22; 8:45 am]

BILLING CODE 4510–26–P**DEPARTMENT OF LABOR****Occupational Safety and Health Administration**

[Docket No. OSHA–2022–0006]

Stakeholder Meeting on OSHA Initiatives To Protect Workers From Heat-Related Hazards**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Notice of stakeholder meeting.

SUMMARY: OSHA invites interested parties to participate in a stakeholder meeting on the agency’s initiatives to protect workers from heat-related hazards. OSHA will provide an overview of its ongoing activities to protect workers from heat-related hazards, as well as an introduction to the agency’s rulemaking process and ways for the public to participate in that process. Additionally, participants are invited to provide public comments and ask questions related to OSHA’s ongoing efforts to prevent heat injury and illness in outdoor and indoor work settings.

DATES: The stakeholder meeting will be held from 12:00 p.m. to 5:00 p.m. ET on May 3, 2022.

ADDRESSES: The meeting will take place virtually using Zoom.

Registration: If you would like to attend, provide public comment, or ask questions, please register online at <https://projects.erg.com/conferences/osha/osha-heat.html>. If you are interested in providing public comments, you must indicate that while registering. In order to accommodate many speakers, public comments will be limited to no more than three minutes during this meeting. The duration of speaking time is subject to change, and the time allotted for each speaker will be finalized upon the close of registration. Although OSHA welcomes all comments and seeks to accommodate many speakers at the meeting, it may not be possible to accommodate all stakeholder requests to speak at the meeting. The order of speakers will be determined based on affiliation and will be confirmed with speakers prior to the event.

Those who cannot attend the meeting and those who are unable or choose not to make verbal comments during the meeting are invited to submit their comments in writing to OSHA via the instructions below.

Public Comments: Those who cannot attend the meeting and those who are unable or choose not to make verbal comments during the meeting are invited to submit their comments in writing. You may submit comments and additional materials electronically until August 1, 2022.

Comments may be submitted as follows:

Electronically: You may submit comments and attachments, identified by Docket No. OSHA–2022–0006, electronically at www.regulations.gov, which is the Federal e-Rulemaking Portal. Follow the online instructions for submitting comments. All written submissions must include the agency's name and the docket number for this public meeting (Docket No. OSHA–2022–0006).

Docket: To read or download comments or other material in the docket go to <https://www.regulations.gov>, identified by Docket No. OSHA–2022–0006. Documents in the docket are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency's name and the docket number for this meeting (Docket No. OSHA–2022–0006). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at www.regulations.gov. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public or submitting materials that contain personal information (either about themselves or others), such as Social Security Numbers and birthdates.

Requests for special accommodations: Please submit requests for special accommodations for this stakeholder meeting during registration.

FOR FURTHER INFORMATION CONTACT:

Press Inquiries: Contact Frank Meilinger, Director, Office of Communications, U.S. Department of Labor; telephone (202) 693–1999; email meilinger.francis2@dol.gov.

General and technical information: Contact Lisa Long, Acting Deputy Director, Directorate of Standards and Guidance, U.S. Department of Labor; telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION:

I. Background

Workers in both outdoor and indoor work settings without adequate climate-controlled environments are at risk of hazardous heat exposure. Workers of color are disproportionately exposed to hazardous levels of heat in essential jobs across these work settings. Climate change is increasing the frequency and intensity of hazardous heat events, which puts more workers at risk of hazardous heat exposure, including in areas of the U.S. not historically impacted by hazardous heat. OSHA has several ongoing initiatives to reduce occupational heat illnesses, injuries, and fatalities. During this stakeholder meeting, OSHA will present an overview of its ongoing activities to protect workers from heat-related hazards, as well as an introduction to the agency's rulemaking process and ways for the public to participate in that process. The agency will also provide an overview of the following topics: (1) The agency's Heat Illness Prevention Campaign, (2) compliance assistance activities, and (3) enforcement efforts. At the end of each OSHA information session, stakeholders will have an opportunity to ask questions about the presentations.

Additionally, this meeting will include periods for public comment and testimony during which OSHA is interested in receiving feedback from stakeholders on how OSHA can more effectively serve the public through its heat injury and illness prevention activities. OSHA is requesting comment from interested parties, including from state and local governments, tribal governments, non-governmental organizations, labor unions, academia, business and industry, tribal/indigenous organizations, and community-based organization stakeholders, as well as individuals, including affected workers, regarding these topics. Case studies, real world examples, and any data to support the comments are encouraged.

II. Meeting Format

The meeting will feature brief presentations from OSHA on the topics outlined in this notice, followed by opportunities for stakeholders to ask questions about the presentations. There will also be public comment and testimony periods during which OSHA is interested in receiving feedback from stakeholders. Participants should focus

on providing comment on the topics provided in this notice. OSHA plans to use this meeting to establish an open dialogue with stakeholders, and information presented to the agency may be used to inform future activities on preventing heat illness and injury in indoor and outdoor workplaces. Written comments may also be provided to OSHA at the conclusion of the meeting, or as a follow-up to the meeting. Those who cannot attend the meeting and those who are unable or choose not to make verbal comments during the meeting are also invited to submit their comments in writing. The meeting will take place virtually using Zoom and will be available for concurrent viewing by the public on the DOL YouTube channel. The meeting will be broadcast in English and Spanish and may be archived for future viewing. More information on registration is provided above.

Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this document pursuant to the following authorities: 29 U.S.C. 653, 655, and 657, Secretary's Order 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR part 1911.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–07251 Filed 4–5–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Overpayment Recovery Questionnaire (OWCP–20)

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed revision for the authority to conduct the information collection request (ICR) titled, "Overpayment Recovery Questionnaire (OWCP–20)". This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by June 6, 2022.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202-354-9660 or by email at suggs.anjanette@dol.gov.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: suggs.anjanette@dol.gov.

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs by telephone at 202-354-9660 or by email at suggs.anjanette@dol.gov.

SUPPLEMENTARY INFORMATION:

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202-354-9660 or by email at suggs.anjanette@dol.gov.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue, NW, Washington, DC 20210; by email: suggs.anjanette@dol.gov.

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs by telephone at 202-354-9660 or by email at suggs.anjanette@dol.gov.

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

I. Background: The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, the Black Lung Benefits Act (BLBA), 30 U.S.C. 901, and the Energy Employees

Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384. This information collection is used by OWCP examiners to ascertain the financial condition of the beneficiary to determine if the overpayment or any part can be recovered; to identify the possible concealment or improper transfer of assets; and to identify and consider present and potential income and current assets for enforced collection proceedings. The questionnaire provides a means for the beneficiary to explain why he/she is without fault in an overpayment matter. If this information were not collected BLBA, EEOICPA and FECA would have little basis to determine appropriate collection proceedings. This information collection is currently approved for use through July 31, 2022.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(b) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Number 1240-0051. Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Overpayment Recovery Questionnaire.

OMB Number: 1240-0051.

Agency Number: OWCP-20.

Affected Public: Individuals and households.

Total Respondents: 6,031.

Total Responses: 6,031.

Time per Response: 1 hour.

Estimated Total Burden Hours: 6,031.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): 54,720.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Anjanette Suggs,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2022-07253 Filed 4-5-22; 8:45 am]

BILLING CODE 4510-CH-P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Advisory Board on Toxic Substances and Worker Health

ACTION: Solicitation for nominations to serve on the advisory board on Toxic Substances and Worker Health for Part E of the Energy Employees Occupational Illness Compensation Program Act.

SUMMARY: The Secretary of Labor (Secretary) invites interested parties to submit nominations for individuals to serve on the Advisory Board on Toxic Substances and Worker Health for Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

DATES: Nominations for individuals to serve on the Board must be submitted (postmarked, if sending by mail; submitted electronically; or received, if

hand delivered) within 30 days of the date of this notice.

ADDRESSES: Nominations may be submitted, including attachments, by any of the following methods:

- *Electronically:* Send to: EnergyAdvisoryBoard@dol.gov (specify in the email subject line, "Advisory Board on Toxic Substances and Worker Health nomination").

- *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy of the documents listed above to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S-3522, 200 Constitution Ave. NW, Washington, DC 20210.

Follow-up communications with nominees may occur as necessary through the process.

FOR FURTHER INFORMATION CONTACT: You may contact Michael Chance, Designated Federal Officer, at chance.michael@dol.gov, or Carrie Rhoads, Alternate Designated Federal Officer, at rhoads.carrie@dol.gov, U.S. Department of Labor, 200 Constitution Avenue NW, Suite S-3522, Washington, DC 20210, telephone (202) 343-5580. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Advisory Board on Toxic Substances and Worker Health (the Board) is mandated by section 3687 of EEOICPA. The Secretary of Labor established the Board under this authority and Executive Order 13699 (June 26, 2015) and in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. app. 2. The purpose of the Board is to advise the Secretary with respect to: (1) The Site Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under Part B of EEOICPA related to lung disease; (4) the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency; (5) the claims adjudication process generally, including review of procedure manual changes prior to incorporation into the manual and claims for medical benefits; and (6) such other matters as the Secretary considers appropriate. In addition, the Board, when necessary, coordinates exchanges of data and findings with the Department of Health and Human

Services' Advisory Board on Radiation and Worker Health, which advises the Department of Health and Human Services' National Institute for Occupational Safety and Health (NIOSH) on various aspects of causation in radiogenic cancer cases under Part B of the EEOICPA program.

The Board shall consist of 12-15 members, to be appointed by the Secretary. A Chair of the Board will be appointed by the Secretary from among the Board members. Pursuant to Section 3687(a)(2), the Advisory Board will reflect a reasonable balance of scientific, medical, and claimant members, to address the tasks assigned to the Advisory Board. The members serve two-year terms. At the discretion of the Secretary, members may be appointed to successive terms or removed at any time. The Board will meet no less than twice per year.

Pursuant to Section 3687(d), no Board member, employee, or contractor can have any financial interest, employment, or contractual relationship (other than a routine consumer transaction) with any person who has provided or sought to provide, within two years of their appointment or during their appointment, goods or services for medical benefits under EEOICPA. A certification that this is true will be required with each nomination.

The Department of Labor is committed to equal opportunity in the workplace and seeks broad-based and diverse Advisory Board membership. Any interested person or organization may nominate one or more individuals for membership. Interested persons are also invited and encouraged to submit statements in support of nominees.

Nomination Process: Any interested person or organization may nominate one or more qualified individuals for membership. If you would like to nominate an individual or yourself for appointment to the Board, please submit the following information:

- The nominee's contact information (name, title, business address, business phone, fax number, and/or business email address) and current employment or position;
- A copy of the nominee's resume or curriculum vitae;
- Category of membership that the nominee is qualified to represent;
- A summary of the background, experience, and qualifications that addresses the nominee's suitability for the nominated membership category identified above;
- Articles or other documents the nominee has authored that indicate the nominee's knowledge, experience, and

expertise in fields related to the EEOICPA program, particularly as pertains to industrial hygiene, toxicology, epidemiology, occupational medicine, lung conditions, or the nuclear facilities covered by the EEOICPA program;

- Documents or other supportive materials that demonstrate the nominee's familiarity, experience, or history of participation with the EEOICPA program or with the administration of a technically complex compensation program such as EEOICPA;

- A signed statement that the nominee does not have any financial interest, employment, or contractual relationship (other than a routine consumer transaction) with any person who has provided or sought to provide, within two years of their appointment or during their appointment, goods or services for medical benefits under EEOICPA; and

- A signed statement that the nominee is aware of the nomination, is willing to regularly attend and participate in Advisory Board meetings, and has no conflicts of interest that would preclude membership on the Board.

Nominees will be appointed based on their demonstrated qualifications, professional experience, and knowledge of issues the Advisory Board may be asked to consider. Nominees will also be selected in accordance with statutory obligations under FACA and Section 3687 of EEOICPA regarding a balanced membership.

Any member appointed to fill a vacancy occurring prior to the expiration of a resigning Board member's term shall be appointed for the remainder of such term. As specified in Section 3687(i), the Advisory Board shall terminate ten (10) years after the date of the enactment of the legislation, which was December 19, 2014. Thus, the Advisory Board shall terminate on December 19, 2024.

Members are Special Government Employees (SGEs). Members will serve without compensation. However, members may each receive reimbursement for travel expenses for attending Board meetings, including per diem in lieu of subsistence, as authorized by the Federal travel regulations.

The activities of the Advisory Board may necessitate its members obtaining security clearance. Pursuant to Section 3687(f), the Secretary of Energy will ensure that the members and staff of the Board, and any contractors performing work in support of the Board, are afforded the opportunity to apply for a

security clearance for any matter for which such a clearance is appropriate, and should provide a determination on eligibility for clearance within 180 days of receiving a completed application.

Christopher Godfrey,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2022-07252 Filed 4-5-22; 8:45 am]

BILLING CODE 4510-CR-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities

Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: Federal Council on the Arts and the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts International Indemnity Panel.

DATES: The meeting will be held on Thursday, May 19, 2022, from 12:00 p.m. until adjourned.

ADDRESSES: The meeting will be held by videoconference originating at the National Endowment for the Arts, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506, (202) 606-8322; evoyatzis@neh.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning on or after June 21, 2022. Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified and the methods of transportation and security measures confidential, I have determined that the meeting will be closed to the public pursuant to subsection (c)(4) of section 552b of title 5, United States Code. I have made this determination under the authority

granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 15, 2016.

Dated: April 1, 2022.

Samuel Roth,

Attorney-Advisor, National Endowment for the Humanities.

[FR Doc. 2022-07249 Filed 4-5-22; 8:45 am]

BILLING CODE 7536-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

60-Day Notice for the "Research Awards Grantee Survey" Proposed Collection; Comment Request

AGENCY: National Endowment for the Arts; National Foundation on the Arts and the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data is provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents is properly assessed. Currently, the National Endowment for the Arts is soliciting comments concerning the proposed information collection through a survey of grantees and awardees of three research funding programs: Research Grants in the Arts, NEA Research Labs, and Research: Art Works. A copy of the information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below within 60 days from the date of this publication in the **Federal Register**.

ADDRESSES: Send comments to Sunil Iyengar, National Endowment for the Arts, via email to research@arts.gov.

SUPPLEMENTARY INFORMATION: The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: April 1, 2022.

Meghan Jugder,

Support Services Specialist, Office of Administrative Services & Contracts, National Endowment for the Arts.

[FR Doc. 2022-07286 Filed 4-5-22; 8:45 am]

BILLING CODE 7537-01-P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's ad hoc Committee on Elections hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: April 8, 2022, from 2-3 p.m. EDT.

PLACE: This meeting will be held by teleconference through the National Science Foundation.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Committee Chair's opening remarks; discussion of progress to build a slate of Nominees for NSB Chair and Vice Chair positions for the 2022-2024 term and next steps.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Andrea Rambow, arambow@nsf.gov, 703-292-7000. You may find meeting updates at <https://www.nsf.gov/nsb/meetings/index.jsp#up>.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022-07334 Filed 4-4-22; 11:15 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0227]

Information Collection: NRC Form 176 “Security Acknowledgement and Termination”

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 176 “Security Acknowledgement and Termination.”

DATES: Submit comments by June 6, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2021–0227. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0227 when contacting the NRC about

the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2021–0227. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2021–0227 on this website.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to PDR.Resource@nrc.gov. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML22006A250. The supporting statement is available in ADAMS under Accession No. ML22006A252.

- *NRC’s PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC’s PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

- *NRC’s Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC’s Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2021–0227 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not

routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB’s approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 176 “Security Acknowledgement and Termination.”
2. *OMB approval number:* 3150 0239.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 176.
5. *How often the collection is required or requested:* On occasion.
6. *Who will be required or asked to respond:* NRC employees, licensees, and contractors.
7. *The estimated number of annual responses:* 400.
8. *The estimated number of annual respondents:* 400.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 80.
10. *Abstract:* The NRC Form 176, “Security Acknowledgment and Termination Statement” is completed by employees, licensees, and contractors in connection with the termination of their access authorization/security clearance granted by the NRC and to acknowledgment and accept their continuing security responsibility.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of

automated collection techniques or other forms of information technology?

Dated: March 31, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022-07180 Filed 4-5-22; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2021-0230]

Information Collection: NRC Form 748, "National Source Tracking Transaction Report"

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 748, "National Source Tracking Transaction Report."

DATES: Submit comments by June 6, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0230. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T-6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington,

DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2021-0230 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0230. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC-2021-0230 on this website.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML21356A003. The supporting statement is available in ADAMS under Accession No. ML21356A867.

- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include

Docket ID NRC-2021-0230 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 748, "National Source Tracking Transaction Report."
2. *OMB approval number:* 3150-0202.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 748.
5. *How often the collection is required or requested:* On occasion (at completion of a transaction, and at inventory reconciliation).
6. *Who will be required or asked to respond:* Licensees that manufacture, receive, transfer, disassemble, or dispose of nationally tracked sources.
7. *The estimated number of annual responses:* 19,945 (14,000 online + 480 batch upload + 5,465 NRC Form 748).
8. *The estimated number of annual respondents:* 1,160 (210 NRC Licensees + 950 Agreement State Licensees).
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 2,093.

10. *Abstract:* In 2006, the NRC amended its regulations to implement a National Source Tracking System (NSTS) for certain sealed sources. The amendments require licensees to report certain transactions involving nationally tracked sources to the NSTS. These transactions include manufacture, transfer, receipt, disassembly, or disposal of the nationally tracked

source. This information collection is mandatory and is used to populate the NSTS. National source tracking is part of a comprehensive radioactive source control program for radioactive materials of greatest concern. The NRC and Agreement States uses the information provided by licensees in the NSTS to track the life cycle of the nationally tracked source from manufacture through shipment receipt, decay, and burial. NSTS enhances the ability of NRC and Agreement States to conduct inspections and investigations, communicate information to other government agencies, and verify legitimate ownership and use of nationally tracked sources.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: March 31, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022-07178 Filed 4-5-22; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2021-0226]

Information Collection: Disposal of High-Level Radioactive Waste in Geologic Repositories

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, "Disposal of High-Level Radioactive Waste in Geologic Repositories."

DATES: Submit comments by June 6, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0226. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T-6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2021-0226 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0226.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. The supporting statement is available in ADAMS under Accession No. ML22024A257.

- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2021-0226 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov/> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Part 60 of title 10 of the *Code of Federal Regulations* (10 CFR), "Disposal of High-Level Radioactive Waste in Geologic Repositories."
2. *OMB approval number:* 3150-0127.
3. *Type of submission:* Extension.

4. *The form number, if applicable:*
Not applicable.

5. *How often the collection is required or requested:* The information need only be submitted one time.

6. *Who will be required or asked to respond:* State or Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of a potential high-level radioactive waste geologic repository site, or wishing to participate in a license application review for a potential geologic repository (other than a potential geologic repository site at Yucca Mountain, Nevada, which is regulated under 10 CFR part 63).

7. *The estimated number of annual responses:* 6.

8. *The estimated number of annual respondents:* 6.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 121 hours per response (121 reporting + 0 recordkeeping).

10. *Abstract:* 10 CFR part 60 requires States and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning the review of a potential repository site or wish to participate in a license application review for a potential repository (other than the Yucca Mountain, Nevada site, which is regulated under 10 CFR part 63). States and Indian Tribes are required to submit information regarding requests for consultation with the NRC and participation in the review of a site characterization plan and/or license application, but only if they wish to obtain NRC consultation services and/or participate in the reviews. The information submitted by the States and Indian Tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts. The NRC anticipates conducting a public rulemaking to revise portions of 10 CFR part 60 in the future. If, as part of this rulemaking, revisions are made affecting the information collection requirements, the NRC will follow OMB requirements for obtaining approval for any revised information collection requirements. [Note: All of the information collection requirements pertaining to Yucca Mountain were included in 10 CFR part 63 and were approved by OMB under control number 3150-0199. The Yucca Mountain site is regulated under 10 CFR part 63 (66 FR 55792, November 2, 2001).].

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: March 31, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022-07181 Filed 4-5-22; 8:45 am]

BILLING CODE 7590-01-P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* April 6, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 29, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 738 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2022-49, CP2022-54.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022-07317 Filed 4-5-22; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* April 6, 2022.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 28, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 216 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2022-48, CP2022-53.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022-07316 Filed 4-5-22; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94563; File No. SR-BOX-2022-10]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt BOX Rule 7350 (Reports and Market Data Products), Move Rule 7130(a)(2) Detailing the High Speed Vendor Feed to Proposed Rule 7350, and Adopt Rule 7350(b) (Liquidity Taker Event Report)

March 31, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 18, 2022, BOX Exchange LLC ("BOX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to propose to adopt BOX Rule 7350 (Reports and Market Data Products), move Rule 7130(a)(2) which details High Speed Vendor Feed ("HSVF") to proposed Rule 7350, and adopt Rule 7350(b) (Liquidity Taker Event Report). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at <http://boxoptions.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt BOX Rule 7350 (Reports and Market Data Products) to provide for the new "Liquidity Taker Event Report" (the "Report"). This is a competitive filing that is based on a proposal recently submitted by MIAX Emerald, LLC ("MIAX Emerald") and approved by the Commission.³

The Report is an optional product⁴ available to Participants.⁵ Currently, the Exchange provides real-time prices and

analytics in the marketplace.⁶ The Exchange believes the additional data points outlined below may help Participants gain a better understanding about their interactions with the Exchange. The Exchange believes the Report will provide Participants with a chance to learn more about better opportunities to access liquidity and receive better execution rates. The proposed Report will increase transparency and democratize information so that all firms that subscribe to the Report have access to the same information on an equal basis, even for firms that do not have the appropriate resources to generate a similar report regarding interactions with the Exchange. None of the components of the proposed Report include real-time market data.

Participants generally use a liquidity accessing order if there is a high probability that it will execute against an order resting on the BOX Book.⁷ The proposed Report would identify by how much time an order that may have been marketable missed an execution. The proposed Report will provide greater visibility into the missed trading execution, which will allow Participants to optimize their models and trading patterns to yield better execution results.

The proposed Report will be a Participant-specific report and will help Participants to better understand by how much time a particular order missed executing against a specific resting order, thus allowing that Participant to determine whether it wants to invest in the necessary resources and technology to mitigate missed executions against certain resting orders on the BOX Book. For example, Participant A submits an order that is posted to the BOX Book and then Participant B enters a marketable order to execute against Participant A's resting order. Immediately thereafter, Participant C sends a marketable order to execute against Participant A's resting order. Because Participant B's order is received by the Exchange before Participant C's order, Participant B's order executes against Participant A's resting order. The proposed Report would provide Participant C the data points necessary for that firm to calculate by how much time they missed executing against Participant A's resting order. The Exchange proposes to provide the Report on a T+1 basis. As

further described below, the Report will be specific and tailored to the Participant that is subscribed to the Report and any data included in the Report that relates to a Participant other than the Participant receiving the Report will be anonymized.

The Exchange proposes to provide the Report in response to Participant demand for data concerning the timeliness of their incoming orders and executions against resting orders. The purpose of the Report is to provide Participants the necessary data in a standardized format on a T+1 basis to those that subscribe to the Report on an equal basis.

Proposed Rule 7350(b) would provide that the Report is a daily report that provides a Participant ("Recipient Participant") with its liquidity response time details for executions of an order resting on the BOX Book, where that Recipient Participant attempted to execute against such resting order within a certain timeframe.

Report Content

Paragraph (b)(1) of Rule 7350 would describe the content of the Report and delineate which information would be provided regarding the resting order,⁸ the response that successfully executed against the resting order, and the response submitted by the Recipient Participant that missed executing against the resting order. It is important to note that the content of the Report will be specific to the Recipient Participant and the Report will not include any information related to any Participant other than the Recipient Participant. The Exchange will restrict all other market participants, including the Recipient Participant, from receiving another market participant's data.

Resting Order Information. Rule 7350(b)(1)(i) would provide that the following information would be included in the Report regarding the resting order: (A) The time the resting order was received by the Exchange;⁹ (B) symbol; (C) order ID, which is a unique reference number assigned to a new order at the time of receipt; (D) whether the Recipient Participant is an Affiliate¹⁰ of the Participant that

³ See Securities Exchange Act Release No. 91787 (May 6, 2021), 86 FR 26111 (May 12, 2021) (SR-EMERALD-2021-09) (Order Approving Proposed Rule Change to Adopt Exchange Rule 531(a), Reports, to Provide for a New "Liquidity Taker Event Report"). See also Securities Exchange Act Release Nos. 92081 (June 1, 2021), 86 FR 30344 (June 7, 2021) (SR-MIAX-2021-21) and 92082 (June 1, 2021), 86 FR 30337 (June 7, 2021) (SR-PEARL-2021-25).

⁴ The Exchange intends to submit a separate filing with the Commission pursuant to Section 19(b)(1) to propose fees for the Liquidity Taker Event Report.

⁵ The term "Participant" means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange. See BOX Rule 100(a)(41).

⁶ See current BOX Rule 7130(a)(2).

⁷ The term "BOX Book" means the electronic book of orders on each single option series maintained by the BOX Trading Host. See BOX Rule 100(a)(10).

⁸ Only displayed orders will be included in the Report. The Exchange notes that it does not currently offer any non-displayed orders types on its options trading platform.

⁹ The time the Exchange received the resting order would be in nanoseconds and is the time the resting order was received by the Exchange's System.

¹⁰ The term "affiliate" of or person "affiliated with" another person means a person who, directly, or indirectly, controls, is controlled by, or is under common control with, such other person. See BOX Rule 100(a)(1).

entered the resting order;¹¹ (E) whether the resting order is from a Public Customer¹² or non-Public Customer;¹³ (F) side (buy or sell); and (G) displayed price and size of the resting order.¹⁴

Execution Information. Rule 7350(b)(1)(ii) would provide that the following information would be included in the Report regarding the execution of the resting order: (A) The BBO¹⁵ at the time of execution;¹⁶ (B) the NBBO¹⁷ at the time of execution;¹⁸ (C) the time first response that executes against the resting order was received by the Exchange and the size of the

¹¹ The Report will simply indicate whether the Recipient Participant is an Affiliate of the Participant that entered the resting order and not include any other information that may indicate the identity of the Participant that entered the resting order.

¹² “Public Customer” means a person that is not a broker or dealer in securities. See BOX Rule 100(a)(52).

¹³ A non-Public Customer is a Professional Customer, broker dealer or Market Maker on BOX. The Exchange notes that the information in proposed BOX Rule 7350(b)(1)(i)(E) differs slightly from the information provided in MIAX Emerald’s Liquidity Taker Event Report due to the information already provided in the HSVF. The MIAX Emerald Liquidity Taker Event Report provides the origin type (e.g., Public Customer, Market Maker, etc.) of the resting order, information that is also available through MIAX Emerald’s proprietary data feeds. See e.g., MIAX Order Feed Interface Specification available at https://www.miaxoptions.com/sites/default/files/pagefiles/MIAX_Emerald_MIAX_Options_Order_Feed_MOR_v1.0a_re.pdf. In comparison, the BOX HSVF only provides Public Customer bid/ask volume at the best limit. While the HSVF does not provide information on non-Public Customer origin types, if an order from a Public Customer is not present, then the volume reported on the HSVF will be 0 (zero), which in turn allows market participants to deduce that the other volume executed was from non-Public Customers. Further, the Exchange notes that the HSVF disseminates all resting orders executable on BOX and thus the information to be provided in the proposed Report can be inferred from information already provided in the BOX HSVF. As such, the proposed Liquidity Taker Event Report will conform to the information already available in the BOX HSVF.

¹⁴ The Exchange notes that the displayed price and size are also disseminated via the Exchange’s proprietary data feed and the Options Price Reporting Authority (“OPRA”). The Exchange also notes that the displayed price of the resting order may be different than the ultimate execution price. This may occur when a resting order is displayed and ranked at different prices upon entry to avoid a locked or crossed market.

¹⁵ The term “BBO” means the best bid or offer on the Exchange.

¹⁶ Exchange Rule 7350(b)(1)(ii)(A) would further provide that if the resting order executes against multiple contra-side responses, only the BBO at the time of the execution against the first response will be included.

¹⁷ The term “NBBO” means the national best bid or offer, each as calculated by BOX based on market information received by BOX from OPRA. See BOX Rule 100(a)(34).

¹⁸ Exchange Rule 7350(b)(1)(ii)(B) would further provide that if the resting order executes against multiple contra-side responses, only the NBBO at the time of the execution against the first response will be included.

execution and type of the response;¹⁹ (D) the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange;²⁰ and (E) whether the response was entered by the Recipient Participant. If the resting order executes against multiple contra-side responses, only the BBO and NBBO at the time of the execution against the first response will be included.

Recipient Participant’s Response Information. Rule 7350(b)(1)(iii) would provide that the following information would be included in the Report regarding response(s) sent by the Recipient Participant: (A) Recipient Participant ID; (B) the time difference between the time the first response that executes against the resting order was received by the Exchange and the time each response sent by the Recipient Participant was received by the Exchange, regardless of whether it executed or not;²¹ (C) time difference between the time the resting order was received by the Exchange and the time the response submitted by the Recipient Participant was received by the Exchange, regardless of whether it executed or not;²² (D) size and type of

¹⁹ The time the Exchange received the response order would be in nanoseconds and would be the time the response was received by the Exchange’s network, which is before the time the response would be received by the System.

²⁰ The time difference would be provided in nanoseconds.

²¹ For purposes of calculating this duration of time, the Exchange will use the time the resting order and the Recipient Participant’s response(s) is received by the Exchange’s network, both of which would be before the order and response(s) would be received by the System. This time difference would be provided in nanoseconds.

²² The Exchange notes that this information is not provided in MIAX Emerald’s Liquidity Taker Event Report. However, as discussed below, Participants can derive this information from information provided in the Report that is identical to information already provided in MIAX Emerald’s Report. Specifically, Participants can take the sum of the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange, see proposed Rule 7350(b)(1)(ii)(D), and the time difference between the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Participant, regardless of whether it executed or not, see proposed Rules 7350(b)(1)(ii)(D) and 7350(b)(1)(iii)(B). By summing these values, the Participant could derive the time difference between the time the resting order was received by the Exchange and the time the response submitted by the Recipient Participant was received by the Exchange, regardless of whether it executed or not. This time difference would be provided in nanoseconds. As discussed above, the Exchange believes that providing this information is reasonable and appropriate as this data point is being derived from information already provided in the Report. Further, the Exchange believes providing this additional information in the Report

each response submitted by Recipient Participant; and (E) Response ID, which is a unique reference number attached to the response by the Recipient Participant.

Timeframe for Data Included in Report

Paragraph (a)(2) would provide that the Report would include the data set forth under Rule 7350(b)(1) described above for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange.

Scope of Data Included in the Report

Paragraph (b)(3) of Rule 7350 would provide that the Report will only include trading data related to the Recipient Participant and, subject to the proposed paragraph (4) of Rule 7350(b) described below, will not include any other Participant’s trading data other than that listed in paragraphs (1)(i) and (ii) of Exchange Rule 7350(b) described above.

Historical Data

Paragraph (b)(4) of Rule 7350 would specify that the Report will contain historical data from the prior trading day and will be available after the end of the trading day, generally on a T+1 basis.

The Exchange also proposes to move Rule 7130(a)(2) to proposed Rule 7350(a). The Exchange believes that moving the details regarding the High Speed Vendor Feed (“HSVF”) to the proposed Reports and Market Data Products rule (Rule 7350) will improve the overall readability of the BOX rules and help prevent investor confusion because all such market data information will reside in one place in the BOX Rulebook.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),²³ in general, and Section 6(b)(5) of the Act,²⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market

is reasonable and appropriate as it will provide greater visibility into the missed trading execution, which will allow Participants to optimize their models and trading patterns to yield better execution results.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

and a national market system, and, in general to protect investors and the public interest. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the optional Report to those interested in subscribing to receive the data. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed Report is similar to a report previously adopted by MIAX Emerald.²⁶

The Exchange believes the proposed Report will serve to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest because it will benefit investors by facilitating their prompt access to the value-added information that is included in the proposed Report. The Report will allow Participants to access information regarding their trading activity that they may utilize to evaluate their own trading behavior and order interactions.

The proposed Report is designed for Participants that are interested in gaining insight into latency in connection with orders that failed to execute against an order resting on the Exchange's Book by providing those Participants data to analyze by how much time their order may have missed an execution against a contra-side order resting on the Book. The Exchange believes that providing this optional latency data to interested Participants is consistent with facilitating transactions in securities, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest because it provides greater visibility into the latency of Participants' incoming orders. Participants may use this data to optimize their models and trading patterns in an effort to yield better execution results by calculating by how much time their order may have missed an execution.

The proposal is designed to offer latency information in a systematized way and standardized format to any Participant that chooses to subscribe to the Report. As a result, the proposal will make latency information for liquidity-seeking orders available in a more

equalized manner and will increase transparency, particularly for Recipient Participants that may not have the expertise to generate the same information on their own. The proposed Report may better enable Recipient Participants to increase the fill rates for their liquidity-seeking orders. At the same time, as is also discussed above, the Report is designed to prevent a Recipient Participant from learning other Participants' sensitive trading information. The Report would not be a real-time market data product, as it would provide only historical trading data for the previous trading day, generally on a T+1 basis. In addition, the data in the Report regarding incoming orders that failed to execute would be specific to the Recipient Participant's orders, and other information in the proposed Report regarding resting orders and executions would be anonymized if it relates to a Participant other than the Recipient Participant.

The Report generally contains three buckets of information. The first two buckets include information about the resting order and the execution of the resting order. Some of this information is available from other public sources, such as OPRA and the Exchange's proprietary data feed, or is similar to information included in a report offered by another exchange. For example, OPRA provides bids, offers, and consolidated last sale and quotation information for options trading on all national securities exchanges, including the Exchange. In addition, the Exchange offers the High-Speed Vendor Feed ("HSVF") which broadcasts BOX's real-time trading and statistical information (comprised of trades, quotes, market depth, strategies, bulletins, summaries, auctions, and other statistics).²⁷

The first bucket of information contained in the Report for the resting order includes the time the resting order was received by the Exchange, the symbol, unique reference number assigned at the time of receipt, side (buy or sell), and the displayed price and size of the resting order. Further, the symbol, whether the resting order is from a Public Customer or non-Public Customer,²⁸ side (buy or sell), and

displayed price and size are also available either via OPRA or the Exchange's HSVF.²⁹ The first bucket of information also indicates whether the Recipient Participant is an Affiliate of the Participant that entered the resting order. This data field will not indicate the identity of the Participant that entered the resting order and would simply allow the Recipient Participant to better understand the scenarios in which it may execute against the orders of its Affiliates.³⁰

The second bucket of information contained in the Report regards the execution of the resting order and includes the BBO and NBBO at the time of execution. These data points are also available either via OPRA or the Exchange's HSVF. The second bucket of information will also indicate whether the response was entered by the Recipient Participant. This data point is simply provided as a convenience. If not entered by the Recipient Participant, this data point will be left blank so as not to include any identifying information about other Participant activity. The second bucket of information also includes the size, time and type of first response that executes against the resting order; as well as the time difference between the time the resting order and first response that executes against the resting order are received by the Exchange. These data points would assist the Recipient Participant in analyzing by how much time their order may have missed an execution against a contra-side order resting on the Book.

The third bucket of information is about the Recipient Participant's response(s) and the time their response(s) is received by the Exchange. This includes the time difference between the time the first response that executes against the resting order was received by the Exchange and the time

Specification available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Emerald_MIAX_Options_Order_Feed_MOR_v1.0a_re.pdf. In comparison, the BOX HSVF only provides Public Customer bid/ask volume at the best limit. While the HSVF does not provide information on non-Public Customer origin types, if an order from a Public Customer is not present, then the volume reported on the HSVF will be 0 (zero), which in turn allows market participants to deduce that the other volume executed was from non-Public Customers. Further, the Exchange notes that the HSVF disseminates all resting orders executable on BOX and thus the information to be provided in the proposed Report can be inferred from information already provided in the BOX HSVF. As such, the proposed Liquidity Taker Event Report will conform to the information already available in the BOX HSVF.

²⁹ See current BOX Rule 7130(a)(2).

³⁰ The Exchange surveils to monitor for aberrant behavior related to internalized trades and identify potential wash sales.

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ See *supra*, note 3.

²⁷ See current BOX Rule 7130(a)(2).

²⁸ See *supra* note 13. As discussed above, the Exchange notes that one piece of data in the first bucket of information differs slightly from the information provided in MIAX Emerald's Liquidity Taker Event Report due to the information already provided in the HSVF. Specifically, the MIAX Emerald Liquidity Taker Event Report provides the origin type (e.g., Public Customer, Market Maker, etc.) of the resting order, information that is already available through MIAX Emerald's proprietary data feeds. See e.g., MIAX Order Feed Interface

of each response sent by the Recipient Participant, regardless of whether it executed or not. Also included is the time difference between the time the resting order was received by the Exchange and the time the response submitted by the Recipient Participant was received by the Exchange. As stated above, these data points would assist the Recipient Participant in analyzing by how much time their order may have missed an execution against a contra-side order resting on the Book. This bucket would also include the size and type of each response submitted by the Recipient Participant, the Recipient Participant identifier, and a response reference number which is selected by the Recipient Participant. Each of these data points are unique to the Recipient Participant and should already be known by Recipient Participant even if not included in the Report. The Exchange notes one additional data point included in the third bucket of information that is not included in the information provided in MIAX Emerald's Report. Specifically, the Exchange proposes to include the time difference between the time the resting order was received by the Exchange and the time the response submitted by the Recipient Participant was received by the Exchange.³¹ As discussed herein, the Exchange believes that providing this information is reasonable and appropriate as this data point is being derived from information already provided in the Report that is identical to information already provided in the MIAX Emerald Report. Specifically, Participants can take the sum of the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange³² and the time difference between the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Participant, regardless of whether it executed or not.³³ By summing these values, the Participant could derive the time difference between the time the resting order was received by the Exchange and the time the response submitted by the Recipient Participant was received by the Exchange, regardless of whether it executed or not. This time difference would be provided in nanoseconds. Further, the Exchange believes providing this additional information in the Report is reasonable and appropriate

as it will provide greater visibility into the missed trading execution, which will allow Participants to optimize their models and trading patterns to yield better execution results.

The Exchange proposes to provide the Report on a voluntary basis and no Participant will be required to subscribe to the Report. The Exchange notes that there is no rule or regulation that requires the Exchange to produce, or that a Participant elect to receive, the Report. It is entirely a business decision of each Participant to subscribe to the Report. The Exchange proposes to offer the Report as a convenience to Participants to provide them with additional information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Participant that chooses to subscribe to the Report may discontinue receiving the Report at any time if that Participant determines that the information contained in the Report is no longer useful.

In summary, the proposed Report will help to protect a free and open market by providing additional data (offered on an optional basis) to the marketplace and by providing investors with greater choices.³⁴ Additionally, the proposal would not permit unfair discrimination because the proposed Report will be available to all Exchange Participants.

The Exchange also proposes to move Rule 7130(a)(2) to proposed Rule 7350(a). The Exchange believes that moving the details regarding the High Speed Vendor Feed ("HSVF") to the proposed Reports and Market Data Products rule (Rule 7350) will benefit investors by improving the overall readability of the BOX rules and help prevent investor confusion by providing all such market data information in one place within the BOX Rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by MIAX Emerald that was recently approved by the Commission.³⁵

In this instance, the proposed rule change to offer the optional Report is in

response to Participant interest. The Exchange does not believe the proposed Report will have an inappropriate burden on intra-market competition between Recipient Participants and other Participants who do not receive the Report. As discussed above, the first two buckets of information included in the Report contain information about the resting order and the execution of the resting order, both of which are generally available to Participants that choose not to receive the Report from other public sources, such as OPRA and the Exchange's HSVF. The third bucket of information is about the Recipient Participant's response and the time their response is received by the Exchange, information which the Recipient Participant would be able to obtain without receiving the Report.³⁶ Additionally, some Participants may already be able to derive a substantial amount of the same data that is provided by some of the components based on their own executions and algorithms.

In sum, if the proposed Report is unattractive to Participants, Participants will opt not to receive it. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Participants or competing order execution venues to maintain their competitive standing in the financial markets.

Lastly, the Exchange does not believe that the proposed change to move the current HSVF rule to the proposed Rule 7350 will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposed clarifying change has no competitive purpose and is only intended to improve the overall readability of the BOX rules and help prevent investor confusion by relocating market data information to reside in one place in the BOX Rulebook.

³⁶ The Exchange notes that the following two points will also be included in the Report: (1) Whether the resting order is from a Public Customer or a non-Public Customer and (2) the time difference between the time the resting order was received by the Exchange and the time the response submitted by the Recipient Participant was received by the Exchange. The Exchange believes providing these data points will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act as this information may be derived from information already provided in the Report or information already provided in the Exchange's HSVF. See *supra*, notes 13 and 22.

³⁴ See Sec. Indus. Fin. Mkts. Ass'n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data).

³⁵ See *supra*, note 3.

³¹ See Proposed Rule 7350(b)(1)(iii)(C).

³² See proposed Rule 7350(b)(1)(ii)(D).

³³ See proposed Rule 7350(b)(1)(iii)(B).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act³⁷ and Rule 19b-4(f)(6)³⁸ thereunder, the Exchange has designated this proposal as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BOX-2022-10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-BOX-2022-10. This file number should be included on the subject line if email is used. To help the Commission process and review your

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2022-10, and should be submitted on or before April 27, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94569; File No. SR-NYSEArca-2022-16]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the DoubleLine Shiller CAPE U.S. Equities ETF Under Rule 8.900-E (Managed Portfolio Shares)

March 31, 2022.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 31, 2022, NYSE Arca, Inc. ("NYSE

Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to List and Trade Shares of the DoubleLine Shiller CAPE® U.S. Equities ETF under Rule 8.900-E. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Rule 8.900-E permits the listing and trading, or trading pursuant to unlisted trading privileges, of Managed Portfolio Shares, which are securities issued by an actively managed open-end investment management company.⁴ Rule 8.900-E(b)(1) requires

⁴ Rule 8.900-E(c)(1) provides that the term "Managed Portfolio Share" means a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 ("Investment Company") organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N-1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an

³⁷ 15 U.S.C. 78s(b)(3)(A).

³⁸ 17 CFR 240.19b-4(f)(6).

³⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade Managed Portfolio Shares of the DoubleLine Shiller CAPE® U.S. Equities ETF (the “Fund”) under Rule 8.900–E.

The Commission has previously approved listing and trading on the Exchange of Managed Portfolio Shares under NYSE Arca Rule 8.900–E.⁵

Description of the Fund and the Trust

The shares of the Fund (the “Shares”) will be issued by the DoubleLine ETF Trust (the “Trust”), a business trust organized under the laws of the state of Delaware and registered with the Commission as an open-end management investment company.⁶ The investment adviser to the Fund will be DoubleLine ETF Adviser LP (the “Adviser”). Foreside Fund Services,

amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

⁵ See Securities Exchange Act Release Nos. 89663 (August 25, 2020), 85 FR 53868 (August 31, 2020) (SR–NYSEArca–2020–48) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of Gabelli ETFs Under Rule 8.900–E, Managed Portfolio Shares); 90528 (November 30, 2020), 85 FR 78389 (December 4, 2020) (SR–NYSEArca–2020–80) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of Alger Mid Cap 40 ETF and Alger 25 ETF Under Rule 8.900–E); and 90683 (December 16, 2020), 85 FR 83665 (December 22, 2020) (SR–NYSEArca–2020–94) (Order Approving a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, To List and Trade Shares of the AdvisorShares Q Portfolio Blended Allocation ETF and AdvisorShares Q Dynamic Growth ETF Under NYSE Arca Rule 8.900–E). See also Securities Exchange Act Release No. 92349 (July 19, 2021), 86 FR 39084 (July 23, 2021) (SR–NYSEArca–2021–54) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Cambiar Large Cap ETF, Cambiar Small Cap ETF and Cambiar SMID ETF) (the “Cambiar Notice”).

⁶ The Trust is registered under the Investment Company Act of 1940 (the “1940 Act”). On October 4, 2021, the Trust filed a registration statement on Form N–1A under the Securities Act of 1933 (the “1933 Act”) and the 1940 Act for the Fund (File No. 811–23746) (the “Registration Statement”). The Trust subsequently amended the Registration Statement on December 30, 2021 and February 18, 2022. The Commission issued an order granting exemptive relief to the Trust (“Exemptive Order”) under the 1940 Act on March 8, 2022 (Investment Company Act Release No. 34527). The Exemptive Order was granted in response to the Trust’s application for exemptive relief (the “Exemptive Application”) (File No. 812–15273). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. The Exchange will not commence trading in Shares of the Fund until the Registration Statement is effective.

LLC (the “Distributor”) will serve as the distributor for the Fund’s Shares. All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange, as provided under Rule 8.900–E(b)(1).

Rule 8.900–E(b)(4) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket.⁷ Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s portfolio composition or has access to information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

Rule 8.900–E(b)(4) is similar to Commentary .03(a)(i) and (iii) to Rule 5.2–E(j)(3); however, Commentary .03(a) in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds.⁸ Rule 8.900–E(b)(4) is also

⁷ Rule 8.900–E(c)(5) provides that the term “Creation Basket” means, on any given business day, the names and quantities of the specified instruments (and/or an amount of cash) that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments (and/or an amount of cash) that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

⁸ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with

similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that Rule 8.900–E(b)(4) relates to establishment and maintenance of a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to an Investment Company’s portfolio and Creation Basket, and not just to the underlying portfolio, as is the case with Managed Fund Shares. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a “fire wall” with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund’s portfolio and/or Creation Basket.

In the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to personnel of the broker-dealer or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio and/or Creation Basket. Any person related to the Adviser or the Trust who makes decisions pertaining to the Fund’s portfolio composition or that has access to information regarding the Fund’s portfolio composition or that has access to information regarding the Fund’s portfolio or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio or changes thereto and the Creation Basket.

Further, Rule 8.900–E(b)(5) requires that any person or entity, including an AP Representative (as defined below),

other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above. The Fund will also be required to comply with Exchange rules relating to disclosure, including Rule 5.3–E(i).

custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

Description of the Fund⁹

The Fund's holdings will conform to the permissible investments as set forth in the Exemptive Application and Exemptive Order, and the holdings will be consistent with all requirements in the Exemptive Application and Exemptive Order.¹⁰

The Fund's primary objective is to seek total return which exceeds the total return of the S&P 500 Index. The Fund will, under normal circumstances, invest at least 80% of its net assets in U.S. equity securities. The Fund's Adviser will reference the Shiller Barclays CAPE® US Sector TR USD Index when making investment decisions for the Fund but has the discretion to invest in securities not included in the Index.¹¹ The Fund may

⁹ The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act. See 17 CFR 240.10A-3.

¹⁰ Pursuant to the Exemptive Order, the only permissible investments for the Fund are the following that trade on a U.S. exchange contemporaneously with Shares of the Fund: Exchange-traded funds ("ETFs"), exchange-traded notes, exchange-listed common stocks, exchange-traded preferred stocks, exchange-traded American Depositary Receipts, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metal trusts, exchange-traded currency trusts, and exchange-traded futures for which the reference asset is one in which the Fund may invest directly, in the case of an index future traded on a U.S. exchange, is based on an index, the components of which are a type of asset in which the Fund could invest directly, as well as cash and cash equivalents (which are short-term U.S. Treasury securities, government money market funds, and repurchase agreements). All of the equity instruments or futures held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group ("ISG") or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

¹¹ The Shiller Barclays CAPE® US Sector TR USD Index (the "Index") incorporates the principles of long-term investing distilled by Dr. Robert Shiller

also invest in other investment companies, including, for example, other open-end or closed-end investment companies and ETFs.

Investment Restrictions

The Fund's holdings will be consistent with all requirements described in the Exemptive Application and Exemptive Order.¹²

The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of the Fund's primary broad-based securities benchmark index.¹³

Creations and Redemptions of Shares

Creations and redemptions of Shares will take place as described in Rule 8.900-E. Specifically, in connection with the creation and redemption of Creation Units¹⁴ the delivery or receipt of any portfolio securities in-kind will be required to be effected through a separate confidential brokerage account (a "Confidential Account").¹⁵ An

and expressed through the CAPE® (Cyclically Adjusted Price Earnings) ratio (the "CAPE® Ratio"). The classic CAPE® Ratio assesses equity market valuations and averages ten years of inflation adjusted earnings to account for earnings and market cycles. The Index's composition is determined monthly. Each month, the Index's methodology ranks eleven US sectors based on a modified CAPE® Ratio (a "value" factor) and a twelve-month price momentum factor (a "momentum" factor). Each US sector is represented by a sector ETF that tracks a sector index, and Index methodology selects the five US sectors with the lowest modified CAPE® Ratio (the sectors that are the most undervalued according to the CAPE® Ratio). The sector with the worst 12-month price momentum among the five selected sectors is eliminated, such that only four of the five sectors would be included in the Index for a given month. The Index methodology allocates an equally weighted long (i.e., investment) exposure to the four remaining US sectors.

¹² See note 10, *supra*.

¹³ The Fund's broad-based securities benchmark index will be the S&P 500 Index.

¹⁴ Rule 8.900-E(c)(6) provides that the term "Creation Unit" means a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash. Rule 8.900-E(c)(7) provides that the term "Redemption Unit" means a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash. For purposes of this filing, the terms "Creation Unit" means either a Creation Unit as defined in Rules 8.900-E(c)(6) or a Redemption Unit as defined in Rule 8.900-E(c)(7).

¹⁵ Rule 8.900-E(c)(4) provides that the term "Confidential Account" means an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized

Participant ("AP"), as defined in the applicable Form N-1A filed with the Commission, will sign an agreement with an AP Representative¹⁶ establishing the Confidential Account for the benefit of the AP. AP Representatives will be broker-dealers. An AP must be a participant in the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC") or a participant in the Depository Trust Company ("DTC"), and must have executed an authorized participant agreement ("Participant Agreement") with the Distributor with respect to the creation and redemption of Creation Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective AP's Confidential Account, for the benefit of the AP, without disclosing the identity of such securities to the AP.

Each business day, the Fund's custodian will transmit the composition of the Fund's Creation Basket (as described below) to each AP Representative. This information will permit an AP that has established a Confidential Account with an AP Representative to transact in the underlying securities of the Creation Basket through their AP Representatives, enabling them to engage in in-kind creation or redemption activity without knowing the identity or weighting of those securities. Fund Shares will be issued and redeemed in Creation Units of 10,000 Shares. The size of a Creation Unit is subject to change. The Fund will offer and redeem Creation Units on a continuous basis at the net asset value ("NAV") per Share next determined after receipt of an order in proper form. The Fund's NAV per Share will be determined as of the closing time of the regular trading session on the Exchange

Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

¹⁶ Rule 8.900-E(c)(3) provides that the term "AP Representative" means an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

(ordinarily, 4:00 p.m. E.T.) on each day that the Exchange is open.

In order to keep costs low and permit the Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and principally in-kind for securities or in cash for the value of such securities. The Fund will issue Creation Units principally in exchange for (i) the in-kind deposit of a designated portfolio of securities (the "Deposit Securities"), which for each Creation Unit will constitute a substantial replication, or a representation, of the securities included in the Fund's portfolio, and (ii) if applicable, an amount of cash (the "Cash Component"). Together, the Deposit Securities and the Cash Component, if applicable, constitute the "Fund Deposit." The Deposit Securities and the securities that will be delivered in an in-kind transfer in a redemption (the "Fund Securities") will be identical. The Cash Component is an amount equal to the difference between the NAV of the Shares of the Fund (per Creation Unit) and the market value of the Deposit Securities. The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities.

On each business day, prior to the opening of business on the Exchange (ordinarily, 9:30 a.m. E.T.), the custodian will make available through NSCC the list of the company names and the required number of shares of each Deposit Security, as applicable, and Cash Component, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. The Deposit Securities, as applicable, and Cash Component, as applicable, announced are applicable to purchases of Creation Units until the next-announced composition of the Fund Deposit. When full or partial cash purchases of Creation Units are available or specified for the Fund, they will be effected in essentially the same manner as in-kind purchases thereof.

Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in-kind, solely under the following circumstances: (a) To the extent there is a Cash Component; (b) if, on a given business day, the Fund announces before the open of trading that all purchases, all redemptions, or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an AP, a Fund determines to require the purchase or

redemption, as applicable, to be made entirely in cash; (d) if, on a given business day, the Fund requires all APs purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Securities or Fund Securities, respectively, solely because such instruments are not eligible for transfer either through the NSCC process or DTC process; or (e) if the Fund permits an AP to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Securities or Fund Securities, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; or (ii) such instruments are not eligible for trading by an AP.

On any given business day, the names and quantities of the instruments that constitute the Deposit Securities and the names and quantities of the instruments that constitute the Fund Securities will be identical to and will correspond pro rata to the positions in the Fund's portfolio (including cash positions), and these instruments may be referred to, in the case of either a purchase or a redemption, as the "Creation Basket."

Placement of Purchase Orders

The Fund will issue Shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of Shares will operate in a manner substantially similar to that of other ETFs. The Fund will issue Shares only at the NAV per Share next determined after an order in proper form is received.

A creation transaction, which is subject to acceptance by the Distributor, generally begins when an AP enters into an irrevocable creation order with the Fund and delivers to the AP Representative the cash necessary to purchase the designated portfolio of securities that constitute the Creation Basket in the Confidential Account. The AP Representative then purchases and delivers the designated portfolio of securities to the Fund's custodian, and the Fund then instructs the custodian to exchange such portfolio of securities for a specified number of Shares in volumes of Creation Units. The AP Representative will seek to assemble the shares of the Creation Basket in a manner that will not reveal its composition. The Distributor will furnish acknowledgements to those placing such orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in the Fund's prospectus or Statement of Additional Information ("SAI").

The NAV of the Fund is expected to be determined once each business day as of the close of the regular trading session on the Exchange (ordinarily, 4:00 p.m. E.T.). An AP must submit an irrevocable purchase order by the time set forth in the Participant Agreement and/or applicable order form, on any business day in order to receive that business day's NAV. On days when the Exchange closes or is anticipated to close earlier than normal, the Fund may require purchase orders to be placed earlier in the day. The date on which an order to purchase (or redeem, as further described below) Creation Units is received and accepted is referred to as the "Order Placement Date."

Purchases of Shares will be settled in-kind and/or in cash for an amount equal to the applicable NAV per Share purchased plus applicable transaction fees.¹⁷ The Fund may permit full or partial cash purchases of Creation Units of the Fund under the circumstances described above. When full or partial cash purchases of Creation Units are available or specified for the Fund, they will be effected in essentially the same manner as in-kind purchases thereof. In the case of a full or partial cash purchase, the AP, through the AP Representative, must pay the cash equivalent of the Deposit Securities it would otherwise provide through an in-kind purchase, plus the same Cash Component required to be paid in connection with an in-kind purchase.

Authorized Participant Redemption

The Shares may be redeemed to the Fund in Creation Unit size or multiples thereof as described below. Redemption orders of Creation Units must be placed by or through an AP. Creation Units of the Fund will be redeemable at their NAV per Share next determined after receipt of a redemption request in proper form. Orders to redeem Creation Units must be submitted in proper form prior to the time as set forth in the Participant Agreement.

Each business day, prior to the opening of trading on the Exchange (currently 9:30 a.m., E.T.), the custodian will transmit to each AP Representative the identity and the required number of each Fund Security and, as applicable and under the circumstances described below, the cash value of the Fund Securities that will be applicable to redemption requests for that day, and the amount of the Cash Redemption Amount (as defined below, if any). A

¹⁷ To the extent that the Fund allows creations or redemptions to be conducted in cash, such transactions will be effected in the same manner for all APs transacting in cash.

redemption transaction generally begins when an AP enters into an irrevocable redemption order with the Fund. The Fund then instructs the custodian to deliver a designated portfolio of securities that constitute the Creation Basket to the appropriate AP Representative's Confidential Account in exchange for the Fund Shares in volumes of Creation Units being redeemed. Orders to redeem Creation Units must be submitted in proper form prior to the time as set forth in the Participant Agreement.

Redemption proceeds for a Creation Unit are paid in-kind, in cash, or combination thereof, as determined by the Trust. With respect to in-kind redemptions of a Fund, redemption proceeds for a Creation Unit will consist of Fund Securities, as announced by the custodian on the business day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of the Shares of the Fund being redeemed, as next determined after a receipt of a request in proper form, and the value of Fund Securities (the "Cash Redemption Amount"), less any fixed redemption transaction fee as set forth below and any applicable additional variable charge as set forth below. In the event that the Fund's securities have a value greater than the NAV of the Shares of the Fund, the Cash Redemption Amount equal to the differential is required to be made by the AP to the Fund. The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption. Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions.

Net Asset Value

The NAV will be calculated for the Shares of the Fund on each business day. The Fund's NAV is determined as of the close of regular trading on the New York Stock Exchange, normally 4:00 p.m., E.T. The NAV of the Fund's Shares is determined by adding the total value of its assets, subtracting its liabilities and then dividing the result by the number of Shares outstanding.

In computing the Fund's NAV, the Fund's securities holdings are valued based on their last readily available market price. Securities for which such information is readily available are generally valued at the last reported sales price, the official closing price as reported by an independent pricing service on the primary market or exchange on which they are traded, or,

in the absence of reported sales, at the most recent bid price. If market prices are unavailable or the Fund thinks that they are unreliable, or when the value of a security has been materially affected by events occurring after the relevant market closes, the Fund will price those securities at fair value as determined in good faith using methods approved by the Fund's Board.

More information about the valuation of the Fund's holdings can be found in the SAI.

Information regarding the Fund's NAV and how often Shares of the Fund traded at a price above (*i.e.*, at a premium) or below (*i.e.*, at a discount) the Fund's NAV will be available on the Fund's website (www.doubleline.com).

Availability of Information

The Fund's website, www.doubleline.com, will include the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including the prior business day's NAV, market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),¹⁸ and a calculation of the premium and discount of the market closing price or Bid/Ask Price against the NAV. The website and information will be publicly available at no charge.

Form N-PORT requires reporting of a Fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a Fund's SAI, its shareholder reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. The Fund's SAI and shareholder reports are available free upon request from the Fund, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed onscreen or downloaded from the Commission's website at www.sec.gov.

Information regarding market price and trading volume of the Shares will be continually available to market participants on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will

¹⁸ The Bid/Ask Price of the Fund's Shares is determined using the mid-point between the current national best bid and offer at the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund or their service providers.

be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Verified Intraday Indicative Value ("VIIV"), as defined in Rule 8.900-E(c)(2),¹⁹ will be widely disseminated by the Reporting Authority²⁰ and/or one or more major market data vendors in one second intervals during the Exchange's Core Trading Session.

Dissemination of the VIIV

With respect to trading of the Shares, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for the Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on the Fund's actual portfolio holdings, (2) the securities in which the Fund plans to invest are generally highly liquid and actively traded and trade at the same time as the Fund and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

The VIIV will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during the Core Trading Session and will be disseminated to all market participants at the same time. The VIIV is based on the current market value of the securities in the Fund's portfolio that day. The methodology for calculating the Fund's VIIV will be available on the Fund's website. The VIIV is intended to provide investors and other market participants with a highly correlated per Share value of the underlying portfolio

¹⁹ Rule 8.900-E(c)(2) provides that the term "Verified Intraday Indicative Value" is the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during the Core Trading Session by the Reporting Authority.

²⁰ Rule 8.900-E(c)(8) provides that the term "Reporting Authority" in respect of a particular series of Managed Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), as the official source for calculating and reporting information relating to such series, including, but not limited to, the NAV, the VIIV, or other information relating to the issuance, redemption, or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

that can be compared to the current market price. Therefore, under normal circumstances the VIIV would be effectively a near real time approximation of the Fund's NAV, which will be computed only once a day, and is available free of charge from one or more market data vendors.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.²¹ Trading in Shares of the Fund will be halted if the circuit breaker parameters in Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to Rule 8.900–E(d)(2)(C), which sets forth circumstances under which Shares of the Fund will be halted.

Specifically, Rule 8.900–E(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²²

Rule 8.900–E(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (i) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the NAV with respect to a series of Managed Portfolio Shares is

not disseminated to all market participants at the same time; (iii) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (iv) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the NAV, or the holdings are available, as required.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the Exchange in all trading sessions in accordance with Rule 7.34–E(a). As provided in Rule 7.6–E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00, for which the MPV for order entry is \$0.0001. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

The Shares will conform to the initial and continued listing criteria under Rule 8.900–E, as well as all terms in the Exemptive Order. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per Share of the Fund will be calculated daily and will be made available to all market participants at the same time.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. As part of these surveillance procedures and consistent with Rule 8.900–E(b)(3) and 8.900–E(d)(2)(B), the Adviser will upon request make available to the Exchange and/or the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange, the daily portfolio holdings of the Fund. The issuer of the Shares of the Fund will be required to represent to the Exchange that it will advise the

Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 5.5–E(m).

FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and certain exchange-traded instruments with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that this proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Fund would meet each of the rules relating to listing and trading of Managed Portfolio Shares. To the extent that the Fund is not in compliance with such rules, the Exchange would either prevent the Fund from listing and trading on the Exchange or commence delisting procedures under Rule 8.900–E(d)(2)(B). Specifically, the Exchange would consider the suspension of trading, and commence delisting proceedings under

²¹ See Rule 7.12–E.

²² The Exemptive Application provides that the Investment Company or their agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares where: (i) The intraday indicative values calculated by the calculation engines differ by more than 25 basis points for 60 seconds in connection with pricing of the VIIV; or (ii) holdings representing 10% or more of a series of Managed Portfolio Shares' portfolio have become subject to a trading halt or otherwise do not have readily available market quotations. Any such requests will be one of many factors considered in order to determine whether to halt trading in a series of Managed Portfolio Shares and the Exchange retains sole discretion in determining whether trading should be halted. As provided in the Exemptive Application, each series of Managed Portfolio Shares would employ a pricing verification agent to continuously compare two intraday indicative values during regular trading hours in order to ensure the accuracy of the VIIV.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

Rule 8.900–E(d)(2)(B), of the Fund under any of the following circumstances: (a) If, following the initial twelve-month period after commencement of trading on the Exchange, there are fewer than 50 beneficial holders of the Fund; (b) if the Exchange has halted trading in the Fund because the VIIV is interrupted pursuant to Rule 8.900–E(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (c) if the Exchange has halted trading in the Fund because the net asset value with respect to such Fund is not disseminated to all market participants at the same time, the holdings of such Fund are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Rule 8.900–E(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (d) if the Exchange has halted trading in Shares of the Fund pursuant to Rule 8.900–E(d)(2)(C)(i) and such issue persists past the trading day in which it occurred; (e) if the Fund has failed to file any filings required by the Commission or if the Exchange is aware that the Fund is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff with respect to the Fund; (f) if any of the continued listing requirements set forth in Rule 8.900–E are not continuously maintained; (g) if any of the statements of representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules as specified herein to permit the listing and trading of the Fund, are not continuously maintained; or (h) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

As discussed above, the Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a “fire wall” with respect to such affiliate broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio and Creation Basket. In the event that (a) the Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Adviser will implement and maintain a fire wall with respect to personnel of the

broker-dealer or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio and/or Creation Basket. Any person related to the Adviser or the Trust who makes decisions pertaining to the Fund’s portfolio composition or that has access to information regarding the Fund’s portfolio or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio or changes thereto and the Creation Basket.

In addition, Rule 8.900–E(b)(5) requires that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket. Any person or entity who has access to information regarding the Fund’s portfolio composition or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the portfolio or changes thereto or the Creation Basket.

The Exchange further believes that Rule 8.900–E is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Shares of the Fund because it provides meaningful requirements about both the data that will be made publicly available about the Shares, as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection set forth in Rule 8.900–E(b)(5) will act as a safeguard against misuse and improper dissemination of information related to the Fund’s portfolio composition, the Creation Basket, or changes thereto. The requirement that any person or entity

implement procedures to prevent the use and dissemination of material non-public information regarding the portfolio or Creation Basket will act to prevent any individual or entity from sharing such information externally and the internal “fire wall” requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer will act to make sure that no entity will be able to misuse the data for their own purposes. Accordingly, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Shares of the Fund and to promote just and equitable principles of trade and to protect investors and the public interest because the Exchange would halt trading under certain circumstances under which trading in the Shares of the Fund may be inadvisable. Specifically, trading in the Shares will be subject to Rule 8.900–E(d)(2)(C)(i), which provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in the Fund. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²⁵ Additionally, trading in the Shares will be subject to Rule 8.900–E(d)(2)(C)(ii), which provides that the Exchange would halt trading where the Exchange becomes aware that: (a) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment

²⁵ See note 22, *supra*.

Company with respect to the series of Managed Portfolio Shares). The Exchange would halt trading in such Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

With respect to the proposed listing and trading of Shares of the Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 8.900–E.²⁶ The Fund's holdings will conform to the permissible investments as set forth in the Exemptive Application and Exemptive Order.²⁷ As noted above, FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and the underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, may obtain trading information regarding trading such instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

With respect to trading of Shares of the Fund, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for the Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on the Fund's actual portfolio holdings, (2) the securities in which the Fund plans to invest are generally highly liquid and actively traded and trade at the same time as the Fund and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

The proposed rule change is designed to promote just and equitable principles

²⁶ The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act. See 17 CFR 240.10A–3.

²⁷ See note 10, *supra*.

of trade and to protect investors and the public interest in that the Exchange will obtain a representation that the NAV per Share of the Fund will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also obtain the Fund's SAI, its shareholder reports, its Form N–CSR (filed twice a year), and its Form N–CEN (filed annually). The Fund's SAI and shareholder reports will be available free upon request from the Fund, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated in one second intervals throughout the Core Trading Session by the Reporting Authority and/or one or more major market data vendors. The website for the Fund will include a prospectus for the Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its members in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

In addition, as noted above, investors will have ready access to the VIIV, and quotation and last sale information for the Shares. The Shares will conform to the initial and continued listing criteria under Rule 8.900–E. The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or –3X) of the Fund's primary broad-based securities benchmark index.

The Exchange also believes that the proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain

information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the VIIV and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit the listing and trading of an additional actively-managed exchange-traded product, thereby promoting competition among exchange-traded products to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁸ and Rule 19b–4(f)(6) thereunder.²⁹

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)³⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁰ 17 CFR 240.19b–4(f)(6)(iii).

the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes it has approved, and noticed for immediate effectiveness, proposed rule changes to permit listing and trading on the Exchange of Managed Portfolio Shares similar to the Funds.³¹ The proposed listing rule for the Fund raises no novel legal or regulatory issues. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.³²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2022-16 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2022-16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2022-16 and should be submitted on or before April 27, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022-07188 Filed 4-5-22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94568; File No. SR-NYSEARCA-2022-19]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers

March 31, 2022.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 30, 2022, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers in Rule 7.12-E. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 16, 2022, the Commission approved the proposal of the Exchange's affiliate, the New York Stock Exchange LLC ("NYSE"), to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers ("MWCB") in NYSE Rule 7.12.⁴ The Exchange now proposes to adopt the same change to make permanent the MWCB pilot program in Rule 7.12-E.

The Pilot Rules

The MWCB rules, including the Exchange's Rule 7.12-E, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the "Pilot

³¹ See *supra* note 5.

³² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 94441 (March 16, 2022) (SR-NYSE-2021-40).

Rules,” *i.e.*, Rule 7.12–E(a)–(d)).⁵ The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (“SPX”).⁶ Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day’s closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the “LULD Plan”),⁷ including any extensions to the pilot period for the LULD Plan.⁸ In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.⁹ In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 7.12–E to untie the pilot’s effectiveness from that of the LULD Plan and to extend the pilot’s effectiveness to the close of business on October 18, 2019.¹⁰ The Exchange then

filed to extend the pilot to the close of business on October 18, 2020,¹¹ October 18, 2021,¹² March 18, 2022,¹³ and April 18, 2022.¹⁴

The MWCB Working Group Study

Beginning in February 2020, at the outset of the COVID–19 pandemic, the markets experienced increased volatility, culminating in four MWCB Level 1 halts on March 9, 12, 16, and 18, 2020. In each instance, pursuant to the Pilot Rules, the markets halted as intended upon a 7% drop in SPX and did not start the process to resume trading until the prescribed 15-minute halt period ended.

On September 17, 2020, the Director of the Commission’s Division of Trading and Markets asked the SROs to conduct a study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in March 2020. In response to the request, the SROs created a MWCB “Working Group” composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission’s request, review data, and compile its study.

On March 31, 2021, the MWCB Working Group submitted its study (the “Study”) to the Commission.¹⁵ The Study included an evaluation of the operation of the Pilot Rules during the March 2020 events and an evaluation of the design of the current MWCB system. In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with

respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the LULD Plan did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of those conclusions, the MWCB Working Group also made several recommendations, including that (1) the Pilot Rules should be made permanent without any changes, and (2) SROs should adopt a rule requiring all designated Regulation SCI firms to participate in at least one Level 1/Level 2 MWCB test each year and to verify their participation via attestation.¹⁶

Proposal To Make the Pilot Rules Permanent

On July 16, 2021, the Exchange’s affiliate, NYSE, proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group’s recommendations.¹⁷ On March 16, 2022, the Commission approved NYSE’s proposal.¹⁸

Consistent with the Commission’s approval of NYSE’s proposal, the Exchange now proposes that the Pilot Rules (*i.e.*, paragraphs (a)–(d) of Rule 7.12–E) be made permanent. To accomplish this, the Exchange proposes to remove the preamble to Rule 7.12–E, which currently provides that the rule is in effect during a pilot period that expires at the close of business on April 18, 2022. The Exchange does not propose any changes to paragraphs (a)–(d) of the Rule.

Consistent with the Commission’s approval of NYSE’s proposal, the Exchange proposes to add new paragraphs (e), (f), and (g) to Rule 7.12–E, as follows:

(e) Market-Wide Circuit Breaker (“MWCB”) Testing.

1. The Exchange will participate in all industry-wide tests of the MWCB mechanism. ETP Holders designated pursuant to paragraph (a) of Rule 2.27 to participate in Exchange Back-up Systems and Mandatory Testing are required to participate in at least one industry-wide MWCB test each year and to verify their participation in that test by attesting that they are able to or have attempted to:

(A) Receive and process MWCB halt messages from the securities information processors (“SIPs”);

¹⁶ See *id.* at 46.

¹⁷ See Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

¹⁸ See *supra* note 4.

⁵ See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (“Pilot Rules Approval Order”).

⁶ The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. See, e.g., NYSE Arca Rule 6.65–O(d)(4).

⁷ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

⁸ See Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NYSEArca–2011–68) (Approval Order); and 68785 (January 31, 2013), 78 FR 8646 (February 6, 2013) (SR–NYSEArca–2013–06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Delaying the Operative Date of a Rule Change to Exchange Rule 7.12–E).

⁹ See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

¹⁰ See Securities Exchange Act Release No. 85561 (April 9, 2019), 84 FR 15262 (April 15, 2019) (SR–NYSEArca–2019–23).

¹¹ See Securities Exchange Act Release No. 87017 (September 19, 2019), 84 FR 50543 (September 25, 2019) (SR–NYSEArca–2019–66).

¹² See Securities Exchange Act Release No. 90136 (October 8, 2020), 85 FR 65082 (October 14, 2020) (SR–NYSEArca–2020–89).

¹³ See Securities Exchange Act Release No. 93228 (October 1, 2021), 86 FR 55901 (October 7, 2021) (SR–NYSEArca–2021–86).

¹⁴ See Securities Exchange Act Release No. 94417 (March 15, 2022), 87 FR 16057 (March 21, 2022) (SR–NYSEArca–2022–12).

¹⁵ See *Report of the Market-Wide Circuit Breaker (“MWCB”) Working Group Regarding the March 2020 MWCB Events*, submitted March 31, 2021 (the “Study”), available at https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.

(B) receive and process resume messages from the SIPs following a MWCB halt;

(C) receive and process market data from the SIPs relevant to MWCB halts; and

(D) send orders following a Level 1 or Level 2 MWCB halt in a manner consistent with their usual trading behavior.

2. To the extent that an ETP Holder participating in a MWCB test is unable to receive and process any of the messages identified in paragraph (e)(1)(A)–(D) of this Rule, its attestation should notify the Exchange which messages it was unable to process and, if known, why.

3. ETP Holders not designated pursuant to standards established in paragraph (a) of Rule 2.27 are permitted to participate in any MWCB test.

(f) In the event that a halt is triggered under this Rule following a Level 1, Level 2, or Level 3 Market Decline, the Exchange, together with other SROs and industry representatives (the “MWCB Working Group”), will review such event. The MWCB Working Group will prepare a report that documents its analysis and recommendations and will provide that report to the Commission within 6 months of the event.

(g) In the event that there is (1) a Market Decline of more than 5%, or (2) an SRO implements a rule that changes its reopening process following a MWCB Halt, the Exchange, together with the MWCB Working Group, will review such event and consider whether any modifications should be made to this Rule. If the MWCB Working Group recommends that a modification should be made to this Rule, the MWCB Working Group will prepare a report that documents its analysis and recommendations and provide that report to the Commission.

2. Statutory Basis

The Exchange believes that the proposal to make the Pilot Rules permanent is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Pilot Rules set out in Rule 7.12–E(a)–(d) are an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant market stress when securities markets experience broad-based declines. The four MWCB halts that occurred in March 2020 provided the Exchange, the other SROs, and market participants with real-world experience as to how the Pilot Rules actually function in practice. Based on the Working Group’s Study and the Exchange’s own analysis of those events, the Exchange believes that

making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

Specifically, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the Pilot Rules worked as intended during the March 2020 events. As detailed above, the markets were in communication before, during, and after each of the MWCB Halts that occurred in March 2020. All 9,000+ equity symbols were successfully halted in a timely manner when SPX declined 7% from the previous day’s closing value, as designed. The Exchange believes that market participants would benefit from having the Pilot Rules made permanent because such market participants are familiar with the design and operation of the MWCB mechanism set out in the Pilot Rules, and know from experience that it has functioned as intended on multiple occasions under real-life stress conditions. Accordingly, the Exchange believes that making the Pilot Rules permanent would enhance investor confidence in the ability of the markets to successfully halt as intended when under extreme stress.

The Exchange further believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the halts that were triggered pursuant to the Pilot Rules in March 2020 appear to have had the intended effect of calming volatility in the market without causing harm. As detailed above, after studying a variety of metrics concerning opening and reopening auctions, quote volatility, and other factors, the Exchange concluded that there was no significant difference in the percentage of securities that opened on a trade versus on a quote for the four days in March 2020 with MWCB Halts, versus the other periods studied. In addition, while the post-MWCB Halt reopening auctions were smaller than typical opening auctions, the size of those post-MWCB Halt reopening auctions plus the earlier initial opening auctions in those

symbols was on average equal to opening auctions in January 2020. The Exchange believes this indicates that the MWCB Halts on the four March 2020 days did not cause liquidity to evaporate. Finally, the Exchange observes that while quote volatility was generally higher on the four days in March 2020 with MWCB Halts as compared to the other periods studied, quote volatility stabilized following the MWCB Halts at levels similar to the January 2020 levels, and LULD Trading Pauses worked as designed to address any additional volatility later in the day. From this evidence, the Exchange concludes that the Pilot Rules actually calmed volatility on the four MWCB Halt days in March 2020, without causing liquidity to evaporate or otherwise harming the market. As such, the Exchange believes that making the Pilot Rules permanent would remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that that making the Pilot Rules permanent without any changes would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the current design of the MWCB mechanism as set out in the Pilot Rules remains appropriate. As detailed above, the Exchange considered whether SPX should be replaced as the reference value, whether the current trigger levels (7%/13%/20%) and halt times (15 minutes for Level 1 and 2 halts) should be modified, and whether changes should be made to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m., and concluded that the MWCB mechanism set out in the Pilot Rules remains appropriate, for the reasons cited above. The Exchange believes that public confidence in the MWCB mechanism would be enhanced by the Pilot Rules being made permanent without any changes, given investors’ familiarity with the Pilot Rules and their successful functioning in March 2020.

The Exchange believes that proposed paragraph (e) regarding MWCB testing is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Working Group recommended that all cash equities exchanges adopt a rule requiring all

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

designated Regulation SCI firms to participate in MWCB testing and to attest to their participation. The Exchange believes that these requirements would promote the stability of the markets and enhance investor confidence in the MWCB mechanism and the protections that it provides to the markets and to investors. The Exchange further believes that requiring firms participating in a MWCB test to identify any inability to process messages pertaining to such MWCB test would contribute to a fair and orderly market by flagging potential issues that should be corrected. The Exchange would preserve such attestations pursuant to its obligations to retain books and records of the Exchange.²¹

The Exchange believes that proposed paragraph (f) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review any halt triggered under Rule 7.12–E and prepare a report of its analysis and recommendations would permit the Exchange, along with other market participants and the Commission, to evaluate such event and determine whether any modifications should be made to Rule 7.12–E in the public interest. Preparation of such a report within 6 months of the event would permit the Exchange, along with the MWCB Working Group, sufficient time to analyze such halt and prepare their recommendations.

The Exchange believes that proposed paragraph (g) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review instances of a Market Decline of more than 5% or an SRO implementing a rule that changes its reopening process following a MWCB Halt would allow the MWCB Working Group to identify situations where it recommends that Rule 7.12–E be modified in the public interest. In such situations where the MWCB Working Group recommends that a modification should be made to Rule 7.12–E, the MWCB Working Group would prepare a report that documents its analysis and recommendations and provide that report to the Commission, thereby removing impediments to and perfecting the mechanism of a free and

open market and a national market system while protecting investors and the public interest.

For the foregoing reasons, the Exchange believes that the proposed change is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address competition, but rather, makes permanent the current MWCB Pilot Rules for the protection of the markets. The Exchange believes that making the current MWCB Pilot Rules permanent would have no discernable burden on competition at all, since the Pilot Rules have already been in effect since 2012 and would be made permanent without any changes. Moreover, because the MWCB mechanism contained in the Pilot Rules requires all exchanges and all market participants to cease trading at the same time, making the Pilot Rules permanent would not provide a competitive advantage to any exchange or any class of market participants.

Further, the Exchange understands that the other SROs will submit substantively identical proposals to the Commission. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²² and Rule 19b–4(f)(6) thereunder.²³ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become

effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)²⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),²⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would allow the Exchange to immediately provide the protections included in this proposal in the event of a MWCB halt, which is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.²⁶

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁷ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–NYSEARCA–2022–19 on the subject line.

²⁴ 17 CFR 240.19b–4(f)(6).

²⁵ 17 CFR 240.19b–4(f)(6)(iii).

²⁶ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁷ 15 U.S.C. 78s(b)(2)(B).

²¹ See 17 CFR 240.17a–1.

²² 15 U.S.C. 78s(b)(3)(A)(iii).

²³ 17 CFR 240.19b–4(f)(6).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2022-19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2022-19 and should be submitted on or before April 27, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2022-07187 Filed 4-5-22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94565; File No. SR-NYSEAMER-2022-17]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers

March 31, 2022.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on March 30, 2022, NYSE American LLC ("NYSE American" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers in Rule 7.12E. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 16, 2022, the Commission approved the proposal of the Exchange's

affiliate, the New York Stock Exchange LLC ("NYSE"), to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers ("MWCB") in NYSE Rule 7.12.⁴ The Exchange now proposes to adopt the same change to make permanent the MWCB pilot program in Rule 7.12E.

The Pilot Rules

The MWCB rules, including the Exchange's Rule 7.12E, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the "Pilot Rules," *i.e.*, Rule 7.12E(a)-(d)).⁵ The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index ("SPX").⁶ Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market

⁴ See Securities Exchange Act Release No. 94441 (March 16, 2022) (SR-NYSE-2021-40).

⁵ See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-BATS-2011-038; SR-BYX-2011-025; SR-BX-2011-068; SR-CBOE-2011-087; SR-C2-2011-024; SR-CHX-2011-30; SR-EDGA-2011-31; SR-EDGX-2011-30; SR-FINRA-2011-054; SR-ISE-2011-61; SR-NASDAQ-2011-131; SR-NSX-2011-11; SR-NYSE-2011-48; SR-NYSEAmex-2011-73; SR-NYSEArca-2011-68; SR-Phlx-2011-129) ("Pilot Rules Approval Order").

⁶ The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.*, NYSE Arca Rule 6.65-O(d)(4).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

²⁸ 17 CFR 200.30-3(a)(12).

Volatility Pursuant to Rule 608 of Regulation NMS (the “LULD Plan”),⁷ including any extensions to the pilot period for the LULD Plan.⁸ In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.⁹ In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 7.12E to untie the pilot’s effectiveness from that of the LULD Plan and to extend the pilot’s effectiveness to the close of business on October 18, 2019.¹⁰ The Exchange then filed to extend the pilot to the close of business on October 18, 2020,¹¹ October 18, 2021,¹² March 18, 2022,¹³ and April 18, 2022.¹⁴

The MWCBS Working Group Study

Beginning in February 2020, at the outset of the COVID-19 pandemic, the markets experienced increased volatility, culminating in four MWCBS Level 1 halts on March 9, 12, 16, and 18, 2020. In each instance, pursuant to the Pilot Rules, the markets halted as intended upon a 7% drop in SPX and did not start the process to resume trading until the prescribed 15-minute halt period ended.

On September 17, 2020, the Director of the Commission’s Division of Trading and Markets asked the SROs to conduct a study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in March 2020. In response to the request, the SROs created a MWCBS “Working Group” composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and

the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission’s request, review data, and compile its study.

On March 31, 2021, the MWCBS Working Group submitted its study (the “Study”) to the Commission.¹⁵ The Study included an evaluation of the operation of the Pilot Rules during the March 2020 events and an evaluation of the design of the current MWCBS system. In the Study, the Working Group concluded: (1) The MWCBS mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCBS halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCBS mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the LULD Plan did not likely have any negative impact on MWCBS functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of those conclusions, the MWCBS Working Group also made several recommendations, including that (1) the Pilot Rules should be made permanent without any changes, and (2) SROs should adopt a rule requiring all designated Regulation SCI firms to participate in at least one Level 1/Level 2 MWCBS test each year and to verify their participation via attestation.¹⁶

Proposal To Make the Pilot Rules Permanent

On July 16, 2021, the Exchange’s affiliate, NYSE, proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group’s recommendations.¹⁷ On March 16, 2022, the Commission approved NYSE’s proposal.¹⁸

Consistent with the Commission’s approval of NYSE’s proposal, the Exchange now proposes that the Pilot Rules (*i.e.*, paragraphs (a)–(d) of Rule

7.12E) be made permanent. To accomplish this, the Exchange proposes to remove the preamble to Rule 7.12E, which currently provides that the rule is in effect during a pilot period that expires at the close of business on April 18, 2022. The Exchange does not propose any changes to paragraphs (a)–(d) of the Rule.

Consistent with the Commission’s approval of NYSE’s proposal, the Exchange proposes to add new paragraphs (e), (f), and (g) to Rule 7.12E, as follows:

(e) Market-Wide Circuit Breaker (“MWCBS”) Testing.

1. The Exchange will participate in all industry-wide tests of the MWCBS mechanism. ETP Holders designated pursuant to paragraph (a) of Rule 2.22E to participate in Exchange Back-up Systems and Mandatory Testing are required to participate in at least one industry-wide MWCBS test each year and to verify their participation in that test by attesting that they are able to or have attempted to:

(A) Receive and process MWCBS halt messages from the securities information processors (“SIPs”);

(B) receive and process resume messages from the SIPs following a MWCBS halt;

(C) receive and process market data from the SIPs relevant to MWCBS halts; and

(D) send orders following a Level 1 or Level 2 MWCBS halt in a manner consistent with their usual trading behavior.

2. To the extent that an ETP Holder participating in a MWCBS test is unable to receive and process any of the messages identified in paragraph (e)(1)(A)–(D) of this Rule, its attestation should notify the Exchange which messages it was unable to process and, if known, why.

3. ETP Holders not designated pursuant to standards established in paragraph (a) of Rule 2.22E are permitted to participate in any MWCBS test.

(f) In the event that a halt is triggered under this Rule following a Level 1, Level 2, or Level 3 Market Decline, the Exchange, together with other SROs and industry representatives (the “MWCBS Working Group”), will review such event. The MWCBS Working Group will prepare a report that documents its analysis and recommendations and will provide that report to the Commission within 6 months of the event.

(g) In the event that there is (1) a Market Decline of more than 5%, or (2) an SRO implements a rule that changes its reopening process following a MWCBS Halt, the Exchange, together with the MWCBS Working Group, will review such event and consider whether any modifications should be made to this Rule. If the MWCBS Working Group recommends that a modification should be made to this Rule, the MWCBS Working Group will prepare a report that documents its analysis and recommendations and provide that report to the Commission.

2. Statutory Basis

The Exchange believes that the proposal to make the Pilot Rules

⁷ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

⁸ See Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NYSEAmex–2011–73) (Approval Order); and 68787 (January 31, 2013), 78 FR 8615 (February 6, 2013) (SR–NYSEMKT–2013–08) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Delaying the Operative Date of a Rule Change to Exchange Rule 80B–Equities).

⁹ See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

¹⁰ See Securities Exchange Act Release No. 85564 (April 9, 2019), 84 FR 15269 (April 15, 2019) (SR–NYSEAMER–2019–14).

¹¹ See Securities Exchange Act Release No. 87025 (September 19, 2019), 84 FR 50527 (September 25, 2019) (SR–NYSEAMER–2019–37).

¹² See Securities Exchange Act Release No. 90135 (October 8, 2020), 85 FR 65100 (October 14, 2020) (SR–NYSEAMER–2020–74).

¹³ See Securities Exchange Act Release No. 93223 (September 30, 2021), 86 FR 55656 (October 6, 2021) (SR–NYSEAMER–2021–40).

¹⁴ See Securities Exchange Act Release No. 94415 (March 15, 2022), 87 FR 16040 (March 21, 2022) (SR–NYSEAMER–2022–14).

¹⁵ See *Report of the Market-Wide Circuit Breaker (“MWCBS”) Working Group Regarding the March 2020 MWCBS Events*, submitted March 31, 2021 (the “Study”), available at https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.

¹⁶ See *id.* at 46.

¹⁷ See Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

¹⁸ See *supra* note 4.

permanent is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Pilot Rules set out in Rule 7.12E (a)–(d) are an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant market stress when securities markets experience broad-based declines. The four MWCBS halts that occurred in March 2020 provided the Exchange, the other SROs, and market participants with real-world experience as to how the Pilot Rules actually function in practice. Based on the Working Group's Study and the Exchange's own analysis of those events, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

Specifically, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the Pilot Rules worked as intended during the March 2020 events. As detailed above, the markets were in communication before, during, and after each of the MWCBS Halts that occurred in March 2020. All 9,000+ equity symbols were successfully halted in a timely manner when SPX declined 7% from the previous day's closing value, as designed. The Exchange believes that market participants would benefit from having the Pilot Rules made permanent because such market participants are familiar with the design and operation of the MWCBS mechanism set out in the Pilot Rules, and know from experience that it has functioned as intended on multiple occasions under real-life stress conditions. Accordingly, the Exchange believes that making the Pilot Rules permanent would enhance investor confidence in the ability of the markets to successfully halt as intended when under extreme stress.

The Exchange further believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the halts that were triggered pursuant to the Pilot Rules in March 2020 appear to have had the intended effect of calming volatility in the market without causing harm. As detailed above, after studying a variety of metrics concerning opening and reopening auctions, quote volatility, and other factors, the Exchange concluded that there was no significant difference in the percentage of securities that opened on a trade versus on a quote for the four days in March 2020 with MWCBS Halts, versus the other periods studied. In addition, while the post-MWCBS Halt reopening auctions were smaller than typical opening auctions, the size of those post-MWCBS Halt reopening auctions plus the earlier initial opening auctions in those symbols was on average equal to opening auctions in January 2020. The Exchange believes this indicates that the MWCBS Halts on the four March 2020 days did not cause liquidity to evaporate. Finally, the Exchange observes that while quote volatility was generally higher on the four days in March 2020 with MWCBS Halts as compared to the other periods studied, quote volatility stabilized following the MWCBS Halts at levels similar to the January 2020 levels, and LULD Trading Pauses worked as designed to address any additional volatility later in the day. From this evidence, the Exchange concludes that the Pilot Rules actually calmed volatility on the four MWCBS Halt days in March 2020, without causing liquidity to evaporate or otherwise harming the market. As such, the Exchange believes that making the Pilot Rules permanent would remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that that making the Pilot Rules permanent without any changes would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the current design of the MWCBS mechanism as set out in the Pilot Rules remains appropriate. As detailed above, the Exchange considered whether SPX

should be replaced as the reference value, whether the current trigger levels (7%/13%/20%) and halt times (15 minutes for Level 1 and 2 halts) should be modified, and whether changes should be made to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m., and concluded that the MWCBS mechanism set out in the Pilot Rules remains appropriate, for the reasons cited above. The Exchange believes that public confidence in the MWCBS mechanism would be enhanced by the Pilot Rules being made permanent without any changes, given investors' familiarity with the Pilot Rules and their successful functioning in March 2020.

The Exchange believes that proposed paragraph (e) regarding MWCBS testing is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Working Group recommended that all cash equities exchanges adopt a rule requiring all designated Regulation SCI firms to participate in MWCBS testing and to attest to their participation. The Exchange believes that these requirements would promote the stability of the markets and enhance investor confidence in the MWCBS mechanism and the protections that it provides to the markets and to investors. The Exchange further believes that requiring firms participating in a MWCBS test to identify any inability to process messages pertaining to such MWCBS test would contribute to a fair and orderly market by flagging potential issues that should be corrected. The Exchange would preserve such attestations pursuant to its obligations to retain books and records of the Exchange.²¹

The Exchange believes that proposed paragraph (f) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCBS Working Group review any halt triggered under Rule 7.12E and prepare a report of its analysis and recommendations would permit the Exchange, along with other market participants and the Commission, to evaluate such event and determine whether any modifications should be made to Rule 7.12E in the public interest. Preparation of such a report within 6 months of the event

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See 17 CFR 240.17a–1.

would permit the Exchange, along with the MWCB Working Group, sufficient time to analyze such halt and prepare their recommendations.

The Exchange believes that proposed paragraph (g) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review instances of a Market Decline of more than 5% or an SRO implementing a rule that changes its reopening process following a MWCB Halt would allow the MWCB Working Group to identify situations where it recommends that Rule 7.12E be modified in the public interest. In such situations where the MWCB Working Group recommends that a modification should be made to Rule 7.12E, the MWCB Working Group would prepare a report that documents its analysis and recommendations and provide that report to the Commission, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system while protecting investors and the public interest.

For the foregoing reasons, the Exchange believes that the proposed change is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address competition, but rather, makes permanent the current MWCB Pilot Rules for the protection of the markets. The Exchange believes that making the current MWCB Pilot Rules permanent would have no discernable burden on competition at all, since the Pilot Rules have already been in effect since 2012 and would be made permanent without any changes. Moreover, because the MWCB mechanism contained in the Pilot Rules requires all exchanges and all market participants to cease trading at the same time, making the Pilot Rules permanent would not provide a competitive advantage to any exchange or any class of market participants.

Further, the Exchange understands that the other SROs will submit substantively identical proposals to the Commission. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²² and Rule 19b-4(f)(6) thereunder.²³ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would allow the Exchange to immediately provide the protections included in this proposal in the event of a MWCB halt, which is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.²⁶

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of

the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁷ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2022-17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMER-2022-17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

²² 15 U.S.C. 78s(b)(3)(A)(iii).

²³ 17 CFR 240.19b-4(f)(6).

²⁴ 17 CFR 240.19b-4(f)(6).

²⁵ 17 CFR 240.19b-4(f)(6)(iii).

²⁶ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁷ 15 U.S.C. 78s(b)(2)(B).

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2022-17 and should be submitted on or before April 27, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2022-07184 Filed 4-5-22; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34552; File No. 812-15310]

Brighthouse Funds Trust I, et al.

April 1, 2022.

AGENCY: Securities and Exchange Commission (“Commission” or “SEC”).

ACTION: Notice.

Notice of an application under Section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from Section 15(c) of the Act.

SUMMARY OF APPLICATION: The requested exemption would permit a Trust’s board of trustees (the “Board”) to approve new sub-advisory agreements and material amendments to existing sub-advisory agreements without complying with the in-person meeting requirement of Section 15(c) of the Act.

APPLICANTS: Brighthouse Funds Trust I, Brighthouse Funds Trust II (each a “Trust” and collectively, the “Trusts”), and Brighthouse Investment Advisers, LLC (“BIA” or the “Adviser”).

FILING DATES: The application was filed on February 17, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC’s Secretary at Secretarys-Office@sec.gov and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below.

Hearing requests should be received by the Commission by 5:30 p.m. on April 26, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act,

hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicants: Kristi Slavin, Brighthouse Investment Advisers, LLC, 125 High Street, Suite 732, Boston, Massachusetts 02110, Brian D. McCabe Esq, Ropes & Gray LLP, Prudential Tower, 800 Boylston Street, Boston, Massachusetts, 02199, Jeremy C. Smith, Esq, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036.

FOR FURTHER INFORMATION CONTACT: Lisa Ragen, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: For Applicants’ representations, legal analysis, and conditions, please refer to Applicants’ application, dated February 17, 2022, which may be obtained via the Commission’s website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC’s EDGAR system. The SEC’s EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC’s Public Reference Room at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2022-07300 Filed 4-5-22; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94566; File No. SR-NYSECHX-2022-04]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers

March 31, 2022.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on March

30, 2022, the NYSE Chicago, Inc. (“NYSE Chicago” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers in Rule 7.12. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 16, 2022, the Commission approved the proposal of the Exchange’s affiliate, the New York Stock Exchange LLC (“NYSE”), to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers (“MWCB”) in NYSE Rule 7.12.⁴ The Exchange now proposes to adopt the same change to make permanent the MWCB pilot program in Rule 7.12.

The Pilot Rules

The MWCB rules, including the Exchange’s Rule 7.12, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 94441 (March 16, 2022) (SR-NYSE-2021-40).

²⁸ 17 CFR 200.30-3(a)(12).

designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the “Pilot Rules,” *i.e.*, Rule 7.12(a)–(d)).⁵ The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (“SPX”).⁶ Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day’s closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the “LULD Plan”),⁷ including any extensions to the pilot period for the LULD Plan.⁸ In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than

pilot, basis.⁹ In light of the proposal to make the LULD Plan permanent, the Exchange amended Article 20, Rule 2 to untie the pilot’s effectiveness from that of the LULD Plan and to extend the pilot’s effectiveness to the close of business on October 18, 2019.¹⁰ After the Commission approved the Exchange’s proposal to transition to trading on Pillar,¹¹ the Exchange subsequently amended the corresponding Pillar rule—Rule 7.12—to extend the pilot’s effectiveness to the close of business on October 18, 2020,¹² October 18, 2021,¹³ March 18, 2022,¹⁴ and April 18, 2022.¹⁵

The MWCB Working Group Study

Beginning in February 2020, at the outset of the COVID–19 pandemic, the markets experienced increased volatility, culminating in four MWCB Level 1 halts on March 9, 12, 16, and 18, 2020. In each instance, pursuant to the Pilot Rules, the markets halted as intended upon a 7% drop in SPX and did not start the process to resume trading until the prescribed 15-minute halt period ended.

On September 17, 2020, the Director of the Commission’s Division of Trading and Markets asked the SROs to conduct a study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in March 2020. In response to the request, the SROs created a MWCB “Working Group” composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission’s request, review data, and compile its study.

On March 31, 2021, the MWCB Working Group submitted its study (the

“Study”) to the Commission.¹⁶ The Study included an evaluation of the operation of the Pilot Rules during the March 2020 events and an evaluation of the design of the current MWCB system. In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the LULD Plan did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of those conclusions, the MWCB Working Group also made several recommendations, including that (1) the Pilot Rules should be made permanent without any changes, and (2) SROs should adopt a rule requiring all designated Regulation SCI firms to participate in at least one Level 1/Level 2 MWCB test each year and to verify their participation via attestation.¹⁷

Proposal To Make the Pilot Rules Permanent

On July 16, 2021, the Exchange’s affiliate, NYSE, proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group’s recommendations.¹⁸ On March 16, 2022, the Commission approved NYSE’s proposal.¹⁹

Consistent with the Commission’s approval of NYSE’s proposal, the Exchange now proposes that the Pilot Rules (*i.e.*, paragraphs (a)–(d) of Rule 7.12) be made permanent. To accomplish this, the Exchange proposes to remove the preamble to Rule 7.12, which currently provides that the rule is in effect during a pilot period that expires at the close of business on April 18, 2022. The Exchange does not propose any changes to paragraphs (a)–(d) of the Rule.

⁵ See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (“Pilot Rules Approval Order”).

⁶ The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. See, e.g., NYSE Arca Rule 6.65–O(d)(4).

⁷ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

⁸ See Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–CHX–2011–30) (Approval Order); and 68777 (January 31, 2013), 78 FR 8673 (February 6, 2013) (SR–CHX–2013) (Notice of Filing of Immediate Effectiveness of Proposed Rule Change Delaying the Operative Date of a Rule Change to CHX Article 20, Rule 2).

⁹ See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

¹⁰ See Securities Exchange Act Release No. 85565 (April 9, 2019), 84 FR 15239 (April 15, 2019) (SR–NYSECHX–2019–05).

¹¹ See Securities Exchange Act Release No. 87264 (October 9, 2019), 84 FR 55345 (October 16, 2019) (SR–NYSECHX–2019–08).

¹² See Securities Exchange Act Release No. 87027 (September 19, 2019), 84 FR 50484 (September 25, 2019) (SR–NYSECHX–2019–09).

¹³ See Securities Exchange Act Release No. 90140 (October 8, 2020), 85 FR 65888 (October 16, 2020) (SR–NYSECHX–2020–30).

¹⁴ See Securities Exchange Act Release No. 93231 (October 1, 2021), 86 FR 55893 (October 7, 2021) (SR–NYSECHX–2021–14).

¹⁵ See Securities Exchange Act Release No. 94420 (March 15, 2022), 87 FR 16060 (March 21, 2022) (SR–NYSECHX–2022–03).

¹⁶ See *Report of the Market-Wide Circuit Breaker (“MWCB”) Working Group Regarding the March 2020 MWCB Events*, submitted March 31, 2021 (the “Study”), available at https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.

¹⁷ See *id.* at 46.

¹⁸ See Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

¹⁹ See *supra* note 4.

Consistent with the Commission's approval of NYSE's proposal, the Exchange proposes to add new paragraphs (e), (f), and (g) to Rule 7.12, as follows:

(e) Market-Wide Circuit Breaker ("MWCB") Testing.

1. The Exchange will participate in all industry-wide tests of the MWCB mechanism. ETP Holders designated pursuant to paragraph (a) of Rule 2.13 to participate in Exchange Back-up Systems and Mandatory Testing are required to participate in at least one industry-wide MWCB test each year and to verify their participation in that test by attesting that they are able to or have attempted to:

(A) Receive and process MWCB halt messages from the securities information processors ("SIPs");

(B) receive and process resume messages from the SIPs following a MWCB halt;

(C) receive and process market data from the SIPs relevant to MWCB halts; and

(D) send orders following a Level 1 or Level 2 MWCB halt in a manner consistent with their usual trading behavior.

2. To the extent that an ETP Holder participating in a MWCB test is unable to receive and process any of the messages identified in paragraph (e)(1)(A)–(D) of this Rule, its attestation should notify the Exchange which messages it was unable to process and, if known, why.

3. ETP Holders not designated pursuant to standards established in paragraph (a) of Rule 2.13 are permitted to participate in any MWCB test.

(f) In the event that a halt is triggered under this Rule following a Level 1, Level 2, or Level 3 Market Decline, the Exchange, together with other SROs and industry representatives (the "MWCB Working Group"), will review such event. The MWCB Working Group will prepare a report that documents its analysis and recommendations and will provide that report to the Commission within 6 months of the event.

(g) In the event that there is (1) a Market Decline of more than 5%, or (2) an SRO implements a rule that changes its reopening process following a MWCB Halt, the Exchange, together with the MWCB Working Group, will review such event and consider whether any modifications should be made to this Rule. If the MWCB Working Group recommends that a modification should be made to this Rule, the MWCB Working Group will prepare a report that documents its analysis and recommendations and provide that report to the Commission.

2. Statutory Basis

The Exchange believes that the proposal to make the Pilot Rules permanent is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and

perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Pilot Rules set out in Rule 7.12(a)–(d) are an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant market stress when securities markets experience broad-based declines. The four MWCB halts that occurred in March 2020 provided the Exchange, the other SROs, and market participants with real-world experience as to how the Pilot Rules actually function in practice. Based on the Working Group's Study and the Exchange's own analysis of those events, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

Specifically, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the Pilot Rules worked as intended during the March 2020 events. As detailed above, the markets were in communication before, during, and after each of the MWCB Halts that occurred in March 2020. All 9,000+ equity symbols were successfully halted in a timely manner when SPX declined 7% from the previous day's closing value, as designed. The Exchange believes that market participants would benefit from having the Pilot Rules made permanent because such market participants are familiar with the design and operation of the MWCB mechanism set out in the Pilot Rules, and know from experience that it has functioned as intended on multiple occasions under real-life stress conditions. Accordingly, the Exchange believes that making the Pilot Rules permanent would enhance investor confidence in the ability of the markets to successfully halt as intended when under extreme stress.

The Exchange further believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the halts that

were triggered pursuant to the Pilot Rules in March 2020 appear to have had the intended effect of calming volatility in the market without causing harm. As detailed above, after studying a variety of metrics concerning opening and reopening auctions, quote volatility, and other factors, the Exchange concluded that there was no significant difference in the percentage of securities that opened on a trade versus on a quote for the four days in March 2020 with MWCB Halts, versus the other periods studied. In addition, while the post-MWCB Halt reopening auctions were smaller than typical opening auctions, the size of those post-MWCB Halt reopening auctions plus the earlier initial opening auctions in those symbols was on average equal to opening auctions in January 2020. The Exchange believes this indicates that the MWCB Halts on the four March 2020 days did not cause liquidity to evaporate. Finally, the Exchange observes that while quote volatility was generally higher on the four days in March 2020 with MWCB Halts as compared to the other periods studied, quote volatility stabilized following the MWCB Halts at levels similar to the January 2020 levels, and LULD Trading Pauses worked as designed to address any additional volatility later in the day. From this evidence, the Exchange concludes that the Pilot Rules actually calmed volatility on the four MWCB Halt days in March 2020, without causing liquidity to evaporate or otherwise harming the market. As such, the Exchange believes that making the Pilot Rules permanent would remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that that making the Pilot Rules permanent without any changes would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the current design of the MWCB mechanism as set out in the Pilot Rules remains appropriate. As detailed above, the Exchange considered whether SPX should be replaced as the reference value, whether the current trigger levels (7%/13%/20%) and halt times (15 minutes for Level 1 and 2 halts) should be modified, and whether changes should be made to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m., and concluded that the MWCB mechanism

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

set out in the Pilot Rules remains appropriate, for the reasons cited above. The Exchange believes that public confidence in the MWCB mechanism would be enhanced by the Pilot Rules being made permanent without any changes, given investors' familiarity with the Pilot Rules and their successful functioning in March 2020.

The Exchange believes that proposed paragraph (e) regarding MWCB testing is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Working Group recommended that all cash equities exchanges adopt a rule requiring all designated Regulation SCI firms to participate in MWCB testing and to attest to their participation. The Exchange believes that these requirements would promote the stability of the markets and enhance investor confidence in the MWCB mechanism and the protections that it provides to the markets and to investors. The Exchange further believes that requiring firms participating in a MWCB test to identify any inability to process messages pertaining to such MWCB test would contribute to a fair and orderly market by flagging potential issues that should be corrected. The Exchange would preserve such attestations pursuant to its obligations to retain books and records of the Exchange.²²

The Exchange believes that proposed paragraph (f) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review any halt triggered under Rule 7.12 and prepare a report of its analysis and recommendations would permit the Exchange, along with other market participants and the Commission, to evaluate such event and determine whether any modifications should be made to Rule 7.12 in the public interest. Preparation of such a report within 6 months of the event would permit the Exchange, along with the MWCB Working Group, sufficient time to analyze such halt and prepare their recommendations.

The Exchange believes that proposed paragraph (g) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the

mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review instances of a Market Decline of more than 5% or an SRO implementing a rule that changes its reopening process following a MWCB Halt would allow the MWCB Working Group to identify situations where it recommends that Rule 7.12 be modified in the public interest. In such situations where the MWCB Working Group recommends that a modification should be made to Rule 7.12, the MWCB Working Group would prepare a report that documents its analysis and recommendations and provide that report to the Commission, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system while protecting investors and the public interest.

For the foregoing reasons, the Exchange believes that the proposed change is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address competition, but rather, makes permanent the current MWCB Pilot Rules for the protection of the markets. The Exchange believes that making the current MWCB Pilot Rules permanent would have no discernable burden on competition at all, since the Pilot Rules have already been in effect since 2012 and would be made permanent without any changes. Moreover, because the MWCB mechanism contained in the Pilot Rules requires all exchanges and all market participants to cease trading at the same time, making the Pilot Rules permanent would not provide a competitive advantage to any exchange or any class of market participants.

Further, the Exchange understands that the other SROs will submit substantively identical proposals to the Commission. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²³ and Rule 19b-4(f)(6) thereunder.²⁴ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would allow the Exchange to immediately provide the protections included in this proposal in the event of a MWCB halt, which is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.²⁷

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁸ of the Act to determine whether the proposed rule

²³ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁴ 17 CFR 240.19b-4(f)(6).

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ 17 CFR 240.19b-4(f)(6)(iii).

²⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁸ 15 U.S.C. 78s(b)(2)(B).

²² See 17 CFR 240.17a-1.

change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSECHX-2022-04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSECHX-2022-04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSECHX-2022-04 and should be submitted on or before April 27, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022-07185 Filed 4-5-22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94567; File No. SR-NYSECHX-2022-04]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers

March 31, 2022.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 30, 2022, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers in Rule 7.12. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 16, 2022, the Commission approved the proposal of the Exchange's affiliate, the New York Stock Exchange LLC ("NYSE"), to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers ("MWCB") in NYSE Rule 7.12.⁴ The Exchange now proposes to adopt the same change to make permanent the MWCB pilot program in Rule 7.12.

The Pilot Rules

The MWCB rules, including the Exchange's Rule 7.12, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the "Pilot Rules," *i.e.*, Rule 7.12(a)-(d)).⁵ The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index ("SPX").⁶ Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline

⁴ See Securities Exchange Act Release No. 94441 (March 16, 2022) (SR-NYSE-2021-40).

⁵ See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-BATS-2011-038; SR-BYX-2011-025; SR-BX-2011-068; SR-CBOE-2011-087; SR-C2-2011-024; SR-CHX-2011-30; SR-EDGA-2011-31; SR-EDGX-2011-30; SR-FINRA-2011-054; SR-ISE-2011-61; SR-NASDAQ-2011-131; SR-NSX-2011-11; SR-NYSE-2011-48; SR-NYSEAmex-2011-73; SR-NYSEArca-2011-68; SR-Phlx-2011-129) ("Pilot Rules Approval Order").

⁶ The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.*, NYSE Arca Rule 6.65-O(d)(4).

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the “LULD Plan”),⁷ including any extensions to the pilot period for the LULD Plan.⁸ In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.⁹ In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 7.12 to untie the pilot’s effectiveness from that of the LULD Plan and to extend the pilot’s effectiveness to the close of business on October 18, 2019.¹⁰ The Exchange then filed to extend the pilot to the close of business on October 18, 2020,¹¹ October 18, 2021,¹² March 18, 2022,¹³ and April 18, 2022.¹⁴

The MWCBS Working Group Study

Beginning in February 2020, at the outset of the COVID–19 pandemic, the markets experienced increased volatility, culminating in four MWCBS Level 1 halts on March 9, 12, 16, and 18, 2020. In each instance, pursuant to the Pilot Rules, the markets halted as intended upon a 7% drop in SPX and did not start the process to resume trading until the prescribed 15-minute halt period ended.

On September 17, 2020, the Director of the Commission’s Division of Trading

and Markets asked the SROs to conduct a study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in March 2020. In response to the request, the SROs created a MWCBS “Working Group” composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission’s request, review data, and compile its study.

On March 31, 2021, the MWCBS Working Group submitted its study (the “Study”) to the Commission.¹⁵ The Study included an evaluation of the operation of the Pilot Rules during the March 2020 events and an evaluation of the design of the current MWCBS system. In the Study, the Working Group concluded: (1) The MWCBS mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCBS halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCBS mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the LULD Plan did not likely have any negative impact on MWCBS functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of those conclusions, the MWCBS Working Group also made several recommendations, including that (1) the Pilot Rules should be made permanent without any changes, and (2) SROs should adopt a rule requiring all designated Regulation SCI firms to participate in at least one Level 1/Level 2 MWCBS test each year and to verify their participation via attestation.¹⁶

Proposal To Make the Pilot Rules Permanent

On July 16, 2021, the Exchange’s affiliate, NYSE, proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group’s

recommendations.¹⁷ On March 16, 2022, the Commission approved NYSE’s proposal.¹⁸

Consistent with the Commission’s approval of NYSE’s proposal, the Exchange now proposes that the Pilot Rules (*i.e.*, paragraphs (a)–(d) of Rule 7.12) be made permanent. To accomplish this, the Exchange proposes to remove the preamble to Rule 7.12, which currently provides that the rule is in effect during a pilot period that expires at the close of business on April 18, 2022. The Exchange does not propose any changes to paragraphs (a)–(d) of the Rule.

Consistent with the Commission’s approval of NYSE’s proposal, the Exchange proposes to add new paragraphs (e), (f), and (g) to Rule 7.12, as follows:

(e) Market-Wide Circuit Breaker (“MWCBS”) Testing.

1. The Exchange will participate in all industry-wide tests of the MWCBS mechanism. ETP Holders designated pursuant to paragraph (a) of Rule 2.13 to participate in Exchange Back-up Systems and Mandatory Testing are required to participate in at least one industry-wide MWCBS test each year and to verify their participation in that test by attesting that they are able to or have attempted to:

(A) Receive and process MWCBS halt messages from the securities information processors (“SIPs”);

(B) receive and process resume messages from the SIPs following a MWCBS halt;

(C) receive and process market data from the SIPs relevant to MWCBS halts; and

(D) send orders following a Level 1 or Level 2 MWCBS halt in a manner consistent with their usual trading behavior.

2. To the extent that an ETP Holder participating in a MWCBS test is unable to receive and process any of the messages identified in paragraph (e)(1)(A)–(D) of this Rule, its attestation should notify the Exchange which messages it was unable to process and, if known, why.

3. ETP Holders not designated pursuant to standards established in paragraph (a) of Rule 2.13 are permitted to participate in any MWCBS test.

(f) In the event that a halt is triggered under this Rule following a Level 1, Level 2, or Level 3 Market Decline, the Exchange, together with other SROs and industry representatives (the “MWCBS Working Group”), will review such event. The MWCBS Working Group will prepare a report that documents its analysis and recommendations and will provide that report to the Commission within 6 months of the event.

(g) In the event that there is (1) a Market Decline of more than 5%, or (2) an SRO implements a rule that changes its reopening process following a MWCBS Halt, the Exchange, together with the MWCBS Working

⁷ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

⁸ See Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NSX–2011–11) (Approval Order); and 68779 (January 31, 2013), 78 FR 8638 (February 6, 2013) (SR–NSX–2013–04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date of Rule 11.20A).

⁹ See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

¹⁰ See Securities Exchange Act Release No. 85572 (April 9, 2019), 84 FR 15257 (April 15, 2019) (SR–NYSENAT–2019–08).

¹¹ See Securities Exchange Act Release No. 87077 (September 24, 2019), 84 FR 51671 (September 30, 2019) (SR–NYSENAT–2019–21).

¹² See Securities Exchange Act Release No. 90133 (October 8, 2020), 85 FR 65121 (October 14, 2020) (SR–NYSENAT–2020–33).

¹³ See Securities Exchange Act Release No. 93232 (October 1, 2021), 86 FR 55669 (October 6, 2021) (SR–NYSENAT–2021–19).

¹⁴ See Securities Exchange Act Release No. Release No. 94418 (March 15, 2022), 87 FR 16043 (March 21, 2022) (SR–NYSENAT–2022–02).

¹⁵ See Report of the Market-Wide Circuit Breaker (“MWCBS”) Working Group Regarding the March 2020 MWCBS Events, submitted March 31, 2021 (the “Study”), available at https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.

¹⁶ See *id.* at 46.

¹⁷ See Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

¹⁸ See *supra* note 4.

Group, will review such event and consider whether any modifications should be made to this Rule. If the MWCB Working Group recommends that a modification should be made to this Rule, the MWCB Working Group will prepare a report that documents its analysis and recommendations and provide that report to the Commission.

2. Statutory Basis

The Exchange believes that the proposal to make the Pilot Rules permanent is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Pilot Rules set out in Rule 7.12(a)–(d) are an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant market stress when securities markets experience broad-based declines. The four MWCB halts that occurred in March 2020 provided the Exchange, the other SROs, and market participants with real-world experience as to how the Pilot Rules actually function in practice. Based on the Working Group's Study and the Exchange's own analysis of those events, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

Specifically, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the Pilot Rules worked as intended during the March 2020 events. As detailed above, the markets were in communication before, during, and after each of the MWCB Halts that occurred in March 2020. All 9,000+ equity symbols were successfully halted in a timely manner when SPX declined 7% from the previous day's closing value, as designed. The Exchange believes that market participants would benefit from having the Pilot Rules made permanent because such market participants are

familiar with the design and operation of the MWCB mechanism set out in the Pilot Rules, and know from experience that it has functioned as intended on multiple occasions under real-life stress conditions. Accordingly, the Exchange believes that making the Pilot Rules permanent would enhance investor confidence in the ability of the markets to successfully halt as intended when under extreme stress.

The Exchange further believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the halts that were triggered pursuant to the Pilot Rules in March 2020 appear to have had the intended effect of calming volatility in the market without causing harm. As detailed above, after studying a variety of metrics concerning opening and reopening auctions, quote volatility, and other factors, the Exchange concluded that there was no significant difference in the percentage of securities that opened on a trade versus on a quote for the four days in March 2020 with MWCB Halts, versus the other periods studied. In addition, while the post-MWCB Halt reopening auctions were smaller than typical opening auctions, the size of those post-MWCB Halt reopening auctions plus the earlier initial opening auctions in those symbols was on average equal to opening auctions in January 2020. The Exchange believes this indicates that the MWCB Halts on the four March 2020 days did not cause liquidity to evaporate. Finally, the Exchange observes that while quote volatility was generally higher on the four days in March 2020 with MWCB Halts as compared to the other periods studied, quote volatility stabilized following the MWCB Halts at levels similar to the January 2020 levels, and LULD Trading Pauses worked as designed to address any additional volatility later in the day. From this evidence, the Exchange concludes that the Pilot Rules actually calmed volatility on the four MWCB Halt days in March 2020, without causing liquidity to evaporate or otherwise harming the market. As such, the Exchange believes that making the Pilot Rules permanent would remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that that making the Pilot Rules permanent without any changes would benefit

market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the current design of the MWCB mechanism as set out in the Pilot Rules remains appropriate. As detailed above, the Exchange considered whether SPX should be replaced as the reference value, whether the current trigger levels (7%/13%/20%) and halt times (15 minutes for Level 1 and 2 halts) should be modified, and whether changes should be made to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m., and concluded that the MWCB mechanism set out in the Pilot Rules remains appropriate, for the reasons cited above. The Exchange believes that public confidence in the MWCB mechanism would be enhanced by the Pilot Rules being made permanent without any changes, given investors' familiarity with the Pilot Rules and their successful functioning in March 2020.

The Exchange believes that proposed paragraph (e) regarding MWCB testing is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Working Group recommended that all cash equities exchanges adopt a rule requiring all designated Regulation SCI firms to participate in MWCB testing and to attest to their participation. The Exchange believes that these requirements would promote the stability of the markets and enhance investor confidence in the MWCB mechanism and the protections that it provides to the markets and to investors. The Exchange further believes that requiring firms participating in a MWCB test to identify any inability to process messages pertaining to such MWCB test would contribute to a fair and orderly market by flagging potential issues that should be corrected. The Exchange would preserve such attestations pursuant to its obligations to retain books and records of the Exchange.²¹

The Exchange believes that proposed paragraph (f) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See 17 CFR 240.17a–1.

review any halt triggered under Rule 7.12 and prepare a report of its analysis and recommendations would permit the Exchange, along with other market participants and the Commission, to evaluate such event and determine whether any modifications should be made to Rule 7.12 in the public interest. Preparation of such a report within 6 months of the event would permit the Exchange, along with the MWCW Working Group, sufficient time to analyze such halt and prepare their recommendations.

The Exchange believes that proposed paragraph (g) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCW Working Group review instances of a Market Decline of more than 5% or an SRO implementing a rule that changes its reopening process following a MWCW Halt would allow the MWCW Working Group to identify situations where it recommends that Rule 7.12 be modified in the public interest. In such situations where the MWCW Working Group recommends that a modification should be made to Rule 7.12, the MWCW Working Group would prepare a report that documents its analysis and recommendations and provide that report to the Commission, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system while protecting investors and the public interest.

For the foregoing reasons, the Exchange believes that the proposed change is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address competition, but rather, makes permanent the current MWCW Pilot Rules for the protection of the markets. The Exchange believes that making the current MWCW Pilot Rules permanent would have no discernable burden on competition at all, since the Pilot Rules have already been in effect since 2012 and would be made permanent without any changes. Moreover, because the MWCW mechanism contained in the Pilot Rules requires all exchanges and all market participants to cease trading at the same time, making the Pilot Rules permanent would not provide a

competitive advantage to any exchange or any class of market participants.

Further, the Exchange understands that the other SROs will submit substantively identical proposals to the Commission. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²² and Rule 19b-4(f)(6) thereunder.²³ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would allow the Exchange to immediately provide the protections included in this proposal in the event of a MWCW halt, which is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.²⁶

²² 15 U.S.C. 78s(b)(3)(A)(iii).

²³ 17 CFR 240.19b-4(f)(6).

²⁴ 17 CFR 240.19b-4(f)(6).

²⁵ 17 CFR 240.19b-4(f)(6)(iii).

²⁶ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁷ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSENAT-2022-04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-NYSENAT-2022-04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the

efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁷ 15 U.S.C. 78s(b)(2)(B).

filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2022-04 and should be submitted on or before April 27, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2022-07186 Filed 4-5-22; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94571; File No. SR-CboeBZX-2021-051]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

March 31, 2022.

I. Introduction

On July 20, 2021, Cboe BZX Exchange, Inc. (“BZX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) ¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the ARK 21Shares Bitcoin ETF (“Trust”) under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on August 6, 2021.³

On September 15, 2021, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute

proceedings to determine whether to disapprove the proposed rule change.⁵ On November 2, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act ⁶ to determine whether to approve or disapprove the proposed rule change.⁷ On December 9, 2021, the Exchange filed Amendment No. 1, which amended and replaced the proposed rule change in its entirety, and on December 17, 2021, the Commission published notice of Amendment No. 1 to the proposed rule change.⁸ On January 25, 2022, the Commission designated a longer period for Commission action on the proposed rule change, as modified by Amendment No. 1.⁹

This order disapproves the proposed rule change, as modified by Amendment No. 1. The Commission concludes that BZX has not met its burden under the Exchange Act and the Commission’s Rules of Practice to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5), and in particular, the requirement that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices” and “to protect investors and the public interest.”¹⁰

When considering whether BZX’s proposal to list and trade the Shares is designed to prevent fraudulent and manipulative acts and practices, the Commission applies the same standard used in its orders considering previous proposals to list bitcoin ¹¹-based commodity trusts and bitcoin-based trust issued receipts.¹² As the

⁵ See Securities Exchange Act Release No. 92989, 86 FR 52530 (Sept. 21, 2021).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 93510, 86 FR 61820 (Nov. 8, 2021).

⁸ See Securities Exchange Act Release No. 93822, 86 FR 73360 (Dec. 27, 2021). Amendment No. 1 to the proposed rule change can be found at: <https://www.sec.gov/rules/sro/cboebzx/2021/34-93822.pdf>.

⁹ See Securities Exchange Act Release No. 94055, 87 FR 4980 (Jan. 31, 2022).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ Bitcoins are digital assets that are issued and transferred via a decentralized, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as the “bitcoin blockchain.” The bitcoin protocol governs the creation of new bitcoins and the cryptographic system that secures and verifies bitcoin transactions. See, e.g., Amendment No. 1, 86 FR at 73362.

¹² See Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (Aug. 1, 2018) (SR-BatsBZX-2016-30) (“Winklevoss Order”); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE Arca Rule

Commission has explained, an exchange that lists bitcoin-based exchange-traded products (“ETPs”) can meet its obligations under Exchange Act Section 6(b)(5) by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size

8.201-E (Commodity-Based Trust Shares) and To List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201-E, Securities Exchange Act Release No. 88284 (Feb. 26, 2020), 85 FR 12595 (Mar. 3, 2020) (SR-NYSEArca-2019-39) (“USBT Order”); Order Disapproving a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93700 (Dec. 1, 2021), 86 FR 69322 (Dec. 7, 2021) (SR-CboeBZX-2021-024) (“WisdomTree Order”); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Krypton Bitcoin ETF Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93860 (Dec. 22, 2021), 86 FR 74166 (Dec. 29, 2021) (SR-CboeBZX-2021-029) (“Krypton Order”); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Valkyrie Bitcoin Fund Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 93859 (Dec. 22, 2021), 86 FR 74156 (Dec. 29, 2021) (SR-NYSEArca-2021-31) (“Valkyrie Order”); Order Disapproving a Proposed Rule Change To List and Trade Shares of the First Trust SkyBridge Bitcoin ETF Trust Under NYSE Arca Rule 8.201-E, Securities Exchange Act Release No. 94006 (Jan. 20, 2022), 87 FR 3869 (Jan. 25, 2022) (SR-NYSEArca-2021-37) (“Skybridge Order”); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 94080 (Jan. 27, 2022), 87 FR 5527 (Feb. 1, 2022) (SR-CboeBZX-2021-039) (“Wise Origin Order”); Order Disapproving a Proposed Rule Change To List and Trade Shares of the NYDIG Bitcoin ETF Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 94395 (Mar. 10, 2022), 87 FR 14932 (Mar. 16, 2022) (SR-NYSEArca-2021-57) (“NYDIG Order”); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Global X Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 94396 (Mar. 10, 2022), 87 FR 14912 (Mar. 16, 2022) (SR-CboeBZX-2021-052) (“Global X Order”). See also Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the SolidX Bitcoin Trust Under NYSE Arca Equities Rule 8.201, Securities Exchange Act Release No. 80319 (Mar. 28, 2017), 82 FR 16247 (Apr. 3, 2017) (SR-NYSEArca-2016-101) (“SolidX Order”). The Commission also notes that orders were issued by delegated authority on the following matters: Order Disapproving a Proposed Rule Change To List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF, Securities Exchange Act Release No. 83904 (Aug. 22, 2018), 83 FR 43934 (Aug. 28, 2018) (SR-NYSEArca-2017-139) (“ProShares Order”); Order Disapproving a Proposed Rule Change To List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, Securities Exchange Act Release No. 83913 (Aug. 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR-CboeBZX-2018-001) (“GraniteShares Order”); Order Disapproving a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93559 (Nov. 12, 2021), 86 FR 64539 (Nov. 18, 2021) (SR-CboeBZX-2021-019) (“VanEck Order”).

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 92543 (Aug. 2, 2021), 86 FR 43289. Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-cboebzx-2021-051/sr-cboebzx2021051.htm>.

⁴ 15 U.S.C. 78s(b)(2).

related to the underlying or reference bitcoin assets.¹³

The standard requires such surveillance-sharing agreements since they “provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.”¹⁴ The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading the underlying assets for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules.¹⁵ The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.¹⁶

In the context of this standard, the terms “significant market” and “market of significant size” include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.¹⁷ A surveillance-sharing

agreement must be entered into with a “significant market” to assist in detecting and deterring manipulation of the ETP, because a person attempting to manipulate the ETP is reasonably likely to also engage in trading activity on that “significant market.”¹⁸

Consistent with this standard, for the commodity-trust ETPs approved to date for listing and trading, there has been in every case at least one significant, regulated market for trading futures on the underlying commodity—whether gold, silver, platinum, palladium, or copper—and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group (“ISG”) membership in common with, that market.¹⁹ Moreover, the surveillance-sharing agreements have been consistently present whenever the Commission has approved the listing and trading of derivative securities, even where the underlying securities were also listed on national securities exchanges—such as options based on an index of stocks traded on a national securities exchange—and were thus subject to the Commission’s direct regulatory authority.²⁰

“markets of significant size,” but this definition is an example that will provide guidance to market participants. *See id.*

¹³ See USBT Order, 85 FR at 12597.

¹⁴ See Winklevoss Order, 83 FR at 37594.

¹⁵ See USBT Order, 85 FR at 12597; Securities Exchange Act Release No. 33555 (Jan. 31, 1994), 59 FR 5619, 5621 (Feb. 7, 1994) (SR-Amex-93-28) (order approving listing of options on American Depository Receipts (“ADRs”). The Commission has also required a surveillance-sharing agreement in the context of index options even when (i) all of the underlying index component stocks were either registered with the Commission or exempt from registration under the Exchange Act; (ii) all of the underlying index component stocks traded in the U.S. either directly or as ADRs on a national securities exchange; and (iii) effective international ADR arbitrage alleviated concerns over the relatively smaller ADR trading volume, helped to ensure that ADR prices reflected the pricing on the home market, and helped to ensure more reliable price determinations for settlement purposes, due to the unique composition of the index and reliance on ADR prices. *See* Securities Exchange Act Release No. 26653 (Mar. 21, 1989), 54 FR 12705, 12708 (Mar. 28, 1989) (SR-Amex-87-25) (stating that “surveillance-sharing agreements between the exchange on which the index option trades and the markets that trade the underlying securities are necessary” and that “[t]he exchange of surveillance data by the exchange trading a stock index option and the markets for the securities comprising the index is important to the detection and deterrence of intermarket manipulation.”). And the Commission has required a surveillance-sharing agreement even when approving options based on an index of stocks traded on a national securities exchange. *See* Securities Exchange Act Release No. 30830 (June 18, 1992), 57 FR 28221, 28224 (June 24, 1992) (SR-Amex-91-22) (stating that surveillance-sharing agreements “ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses”).

Listing exchanges have also attempted to demonstrate that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices, including that the bitcoin market as a whole or the relevant underlying bitcoin market is “uniquely” and “inherently” resistant to fraud and manipulation.²¹ In response, the Commission has agreed that, if a listing exchange could establish that the underlying market inherently possesses a unique resistance to manipulation beyond the protections that are utilized by traditional commodity or securities markets, it would not necessarily need to enter into a surveillance-sharing agreement with a regulated significant market.²² Such resistance to fraud and manipulation, however, must be novel and beyond those protections that exist in traditional commodity markets or equity markets for which the Commission has long required surveillance-sharing agreements in the context of listing derivative securities products.²³ No listing exchange has satisfied its burden to make such demonstration.²⁴

Here, BZX contends that approval of the proposal is consistent with Section 6(b)(5) of the Exchange Act, and, in particular, Section 6(b)(5)’s requirement that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.²⁵ As discussed in more detail below, BZX asserts that the proposal is consistent with Section 6(b)(5) of the Exchange Act because the Exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size,²⁶ and there exist other means to prevent fraudulent and manipulative acts and practices that are sufficient to justify dispensing with the requisite surveillance-sharing agreement.²⁷

Specifically, the Exchange believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Exchange Act because the proposal sufficiently demonstrates that the Chicago Mercantile Exchange (“CME”) bitcoin futures market represents a regulated market of significant size and

²¹ See USBT Order, 85 FR at 12597.

²² See Winklevoss Order, 83 FR at 37580, 37582–91 (addressing assertions that “bitcoin and bitcoin [spot] markets” generally, as well as one bitcoin trading platform specifically, have unique resistance to fraud and manipulation); *see also* USBT Order, 85 FR at 12597.

²³ See USBT Order, 85 FR at 12597.

²⁴ See *supra* note 12.

²⁵ See Amendment No. 1, 86 FR at 73370–78.

²⁶ See *id.* at 73371–72.

²⁷ See *id.* at 73372–78.

¹³ See USBT Order, 85 FR at 12596. *See also* Winklevoss Order, 83 FR at 37592 n.202 and accompanying text (discussing previous Commission approvals of commodity-trust ETPs); GraniteShares Order, 83 FR at 43925–27 nn.35–39 and accompanying text (discussing previous Commission approvals of commodity-futures ETPs).

¹⁴ See Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70959 (Dec. 22, 1998) (“NDSP Adopting Release”). *See also* Winklevoss Order, 83 FR at 37594; ProShares Order, 83 FR at 43936; GraniteShares Order, 83 FR at 43924; USBT Order, 85 FR at 12596.

¹⁵ See NDSP Adopting Release, 63 FR at 70959.

¹⁶ See Winklevoss Order, 83 FR at 37592–93; Letter from Brandon Becker, Director, Division of Market Regulation, Commission, to Gerard D. O’Connell, Chairman, Intermarket Surveillance Group (June 3, 1994), available at <https://www.sec.gov/divisions/marketreg/mr-noaction/ig060394.htm>.

¹⁷ See Winklevoss Order, 83 FR at 37594. This definition is illustrative and not exclusive. There could be other types of “significant markets” and

that, on the whole, “the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.”²⁸

Further, BZX believes that the proposal would give U.S. investors access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors. According to BZX, the proposed listing and trading of the Shares would mitigate risk by: (i) Reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in bitcoin futures exchange-traded funds and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodial spot bitcoin.²⁹

In the analysis that follows, the Commission examines whether the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Exchange Act by addressing: In Section III.B.1 assertions that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices; in Section III.B.2 assertions that BZX has entered into a comprehensive surveillance-sharing agreement with a regulated market of significant size related to bitcoin; and in Section III.C assertions that the proposal is consistent with the protection of investors and the public interest.

Based on its analysis, the Commission concludes that BZX has not established that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Commission further concludes that BZX has not established that it has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to bitcoin. As discussed further below, BZX repeats certain assertions made in prior bitcoin-based ETP proposals that the Commission has previously addressed and rejected—and more importantly, BZX does not respond to the Commission’s reasons for rejecting those assertions but merely repeats them. As a result, the Commission is unable to find that the proposed rule change is consistent with the statutory requirements of Exchange Act Section 6(b)(5).

The Commission again emphasizes that its disapproval of this proposed rule change, as modified by Amendment No. 1, does not rest on an evaluation of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment. Rather, the Commission is disapproving this proposed rule change, as modified by Amendment No. 1, because, as discussed below, BZX has not met its burden to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5).

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

As described in more detail in Amendment No. 1,³⁰ the Exchange proposes to list and trade the Shares of the Trust under BZX Rule 14.11(e)(4), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust would be to seek to track the performance of bitcoin, as measured by the performance of the S&P Bitcoin Index (“Index”), adjusted for the Trust’s expenses and other liabilities.³¹ Each Share will represent a fractional undivided beneficial interest in the bitcoin held by the Trust. The Trust’s assets will consist of bitcoin held by the Custodian on behalf of the Trust. The Trust generally does not intend to hold cash or cash equivalents. However, there may be situations where the Trust will unexpectedly hold cash on a temporary basis.³²

In seeking to achieve its investment objective, the Trust would hold bitcoin and value the Shares daily based on the Index. The Index is a U.S. dollar-denominated composite reference rate for the price of bitcoin. The Index price is currently sourced from the following platforms: Binance, Bitfinex, Bitflyer, Bittrex, Bitstamp, Coinbase Pro, Gemini, HitBTC, Huobi, Kraken, KuCoin, and Poloniex.³³ The Index methodology is

³⁰ See Amendment No. 1, *supra* note 8. See also draft Registration Statement on Form S-1, dated June 28, 2021, filed with the Commission on behalf of the Trust (“Registration Statement”).

³¹ See Amendment No. 1, 86 FR at 73379. 21Shares US LLC (“Sponsor”) is the sponsor of the Trust. Delaware Trust Company is the trustee, and The Bank of New York Mellon will be the administrator (“Administrator”) and transfer agent. Foreside Global Services, LLC will be the marketing agent in connection with the creation and redemption of Shares. ARK Investment Management LLC will provide assistance in the marketing of the Shares. Coinbase Custody Trust Company, LLC (“Custodian”) will be responsible for custody of the Trust’s bitcoin. See *id.* at 73361, 73378.

³² See *id.* at 73378–79.

³³ The underlying platforms are sourced by Lukka Inc. (“Data Provider”), which according to BZX,

intended to determine the fair market value for bitcoin by determining the principal market for bitcoin as of 4:00 p.m. ET daily.³⁴

The net asset value (“NAV”) of the Trust means the total assets of the Trust including, but not limited to, all bitcoin and cash, if any, less total liabilities of the Trust, each determined on the basis of generally accepted accounting principles. The NAV of the Trust is the aggregate value of the Trust’s assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Trust’s NAV, the Administrator values the bitcoin held by the Trust based on the price set by the Index as of 4:00 p.m. ET. The Administrator determines the NAV of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. ET.³⁵

The Trust will provide information regarding the Trust’s bitcoin holdings, as well as an Intraday Indicative Value (“IIV”) per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange’s Regular Trading Hours (9:30 a.m. ET to 4:00 p.m. ET). The IIV will be calculated by using the prior day’s closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust’s bitcoin holdings during the trading day.³⁶

When the Trust sells or redeems its Shares, it will do so in “in-kind” transactions in blocks of 5,000 Shares. When creating the Shares, authorized

bases its sourcing on a combination of qualitative and quantitative metrics to analyze a comprehensive data set and evaluate factors including legal/regulation, Know-Your-Customer/transaction risk, data provision, security, team/exchange, asset quality/diversity, market quality, and negative events. See *id.* at 73379.

³⁴ According to BZX, the Index methodology uses a ranking approach that considers several platform characteristics including oversight and intra-day trading volume. Specifically, to rank the credibility and quality of each platform, the Data Provider dynamically assigns a Base Exchange Score (“BES”) to the key characteristics for each platform. The BES reflects the fundamentals of a platform and determines which platform should be designated as the principal market at a given point of time. This score is determined by computing a weighted average of the values assigned to four different platform characteristics: (i) Oversight; (ii) microstructure efficiency; (iii) data transparency; and (iv) data integrity. The methodology then applies a five-step weighting process for identifying a principal market and the last price on that market. Following this weighting process, an “executed exchange price” is assigned for bitcoin as of 4:00 p.m. ET. The Data Provider takes the last traded prices at that moment in time on that trading venue for the relevant pair (bitcoin/USD) when determining the Index price. See *id.* at 73379–80.

³⁵ See *id.* at 73381.

³⁶ See *id.* at 73380.

²⁸ See *id.* at 73382.

²⁹ See *id.* at 73390.

participants will deliver, or facilitate the delivery of, bitcoin to the Trust's account with the Custodian in exchange for the Shares, and, when redeeming the Shares, the Trust, through the Custodian, will deliver bitcoin to such authorized participants.³⁷

III. Discussion

A. The Applicable Standard for Review

The Commission must consider whether BZX's proposal is consistent with the Exchange Act. Section 6(b)(5) of the Exchange Act requires, in relevant part, that the rules of a national securities exchange be designed "to prevent fraudulent and manipulative acts and practices" and "to protect investors and the public interest."³⁸ Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change."³⁹

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,⁴⁰ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.⁴¹ Moreover, "unquestioning reliance" on

an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.⁴²

B. Whether BZX Has Met Its Burden To Demonstrate That the Proposal Is Designed To Prevent Fraudulent and Manipulative Acts and Practices

(1) Assertions That Other Means Besides Surveillance-Sharing Agreements Will Be Sufficient To Prevent Fraudulent and Manipulative Acts and Practices

As stated above, the Commission has recognized that a listing exchange could demonstrate that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with a comprehensive surveillance-sharing agreement with a regulated market of significant size, including by demonstrating that the bitcoin market as a whole or the relevant underlying bitcoin market is uniquely and inherently resistant to fraud and manipulation.⁴³ Such resistance to fraud and manipulation must be novel and beyond those protections that exist in traditional commodities or securities markets.⁴⁴

(i) Assertions Regarding Bitcoin Markets

BZX asserts that bitcoin is resistant to price manipulation. According to BZX, the geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin.⁴⁵ Fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging.⁴⁶ To the extent that there are bitcoin platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other platforms because participants will generally ignore markets with quotes that they deem non-executable.⁴⁷

BZX further argues that the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin on any single venue would require manipulation of the global bitcoin price in order to be effective.⁴⁸ Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin trading venue.⁴⁹ As a result, BZX concludes that "the potential for manipulation on a [bitcoin] trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences."⁵⁰

BZX provides results of statistical analysis by the Sponsor in support of its assertions regarding linkages between bitcoin markets and efficient arbitrage across such markets. First, according to BZX, using daily bitcoin prices, the Sponsor calculated the Pearson correlation⁵¹ of returns across certain bitcoin spot markets, non-U.S. bitcoin ETPs, and the CME, and concluded that there is a high degree of correlation across these markets.⁵² BZX argues that in markets that are globally and efficiently integrated, one would expect changes in prices of an asset across all markets to be highly correlated, and that "the rationale behind this is that quick and efficient arbitrageurs would capture potentially profitable opportunities, consequently converging prices to the average intrinsic value very rapidly."⁵³

Second, BZX asserts that, according to the Sponsor's research, this high correlation holds true during periods of extreme price volatility. Employing a statistical component called cokurtosis,

⁴⁸ See *id.*

⁴⁹ See *id.*

⁵⁰ See *id.*

⁵¹ According to the Exchange, the Pearson correlation is a measure of linear association between two variables and indicates the magnitude as well as direction of this relationship. See *id.* at 73368 n.68.

⁵² See *id.* at 73368. BZX represents that correlations are between 57% and 99%, with the latter found mainly across centralized market venues due to their higher level of interconnectedness and the lower correlations pertaining mainly to the non-U.S. bitcoin ETPs, which are relatively newer products and are mainly offered by a few competing market makers who are required to trade in large blocks, thus making it, according to BZX, economically infeasible to capture small mispricings. According to BZX, as additional investors and arbitrageurs enter the market and capture the mispricing opportunities between these markets, it is likely that there will be much higher levels of correlations across all markets. See *id.*

⁵³ See *id.*

³⁷ See *id.* at 73379.

³⁸ 15 U.S.C. 78f(b)(5). Pursuant to Section 19(b)(2) of the Exchange Act, 15 U.S.C. 78s(b)(2), the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act. Exchange Act Section 6(b)(5) states that an exchange shall not be registered as a national securities exchange unless the Commission determines that "[t]he rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange." 15 U.S.C. 78f(b)(5).

³⁹ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

⁴⁰ See *id.*

⁴¹ See *id.*

⁴² *Susquehanna Int'l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017) ("Susquehanna").

⁴³ See USBT Order, 85 FR at 12597 n.23. The Commission is not applying a "cannot be manipulated" standard. Instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. See *id.*

⁴⁴ See *id.* at 12597.

⁴⁵ See Amendment No. 1, 86 FR at 73370 n.73.

⁴⁶ See *id.*

⁴⁷ See *id.*

which, according to BZX, measures to what extent two random variables change together, the Sponsor found, using hourly bitcoin prices, that the bitcoin markets tend to move very similarly, especially for extreme price deviations. BZX states that this is evidence of a robust global bitcoin market “that quickly reacts in a unanimous manner to extreme price movements across both the spot markets, futures and [non-U.S.] ETP markets.”⁵⁴ According to BZX, this implies that “no single [b]itcoin market can deviate significantly from the consensus for a prolonged period of time, such that the global [b]itcoin market is sufficiently large and has an inherent unique resistance to manipulation.”⁵⁵

Third, based on the Sponsor’s research using daily bitcoin price series, BZX argues that cross-platform spreads in bitcoin have been declining consistently over the past several years.⁵⁶ BZX contends that the “clear and sharp” decline in the spread indicates that the bitcoin market has become more efficient over time.⁵⁷ In addition, based on the Sponsor’s research, BZX argues that the magnitude of outlier spreads have also declined over time, and that the market has experienced a 38% year-on-year decline in the annual median spread, indicating “a greater degree of [b]itcoin price convergence across [platforms] and a more efficient market.”⁵⁸ Further, based on the Sponsor’s calculations of a 7-day rolling standard deviation of the spread from January 1, 2017, to December 1, 2021, BZX asserts that the dispersion in bitcoin prices across all platforms has decreased over time, indicating that prices on all the considered platforms converge towards the “intrinsic average” much more efficiently, and

⁵⁴ According to BZX, if two returns series exhibit a high degree of cokurtosis, this means that they tend to undergo extreme positive and negative changes simultaneously. A cokurtosis value larger than +3 or less than -3 is considered statistically significant. According to BZX, the Sponsor calculated cokurtosis using hourly bitcoin returns across “centralized” market venues, two non-U.S. ETPs (21Shares Bitcoin ETP (Ticker: ABTC) and VanEck Vectors Bitcoin ETN (Ticker: VBTC)), and the CME. *See id.* at 73369 & n.69.

⁵⁵ *See id.* at 73369.

⁵⁶ According to BZX, the Sponsor calculated the largest cross-platform percentage spread (defined as “%C-Spread”) at a given time by subtracting the highest price across all platforms at that time from the lowest price across all platforms at that time, and dividing the result by that lowest price. BZX represents that, for this calculation, the Sponsor used daily bitcoin price series from Binance, Bitfinex, Bithumb, Bitstamp, Cexio, Coinbase, Coinone, Gateio, Gemini, HuobiPro, itBit, Kraken, Kucoin, and OKEX. *See id.* at 73372 & n.95.

⁵⁷ *See id.* at 73373.

⁵⁸ *See id.*

suggesting that the market has become better at quickly reaching a “consensus price” for bitcoin.⁵⁹ BZX posits that, as the pricing of the bitcoin market becomes increasingly efficient, pricing methodologies become “more accurate and less susceptible to manipulation.” BZX further asserts that the “clustering of prices across a variety of sources within the primary market” points towards robust price discovery mechanisms and efficient arbitrage.⁶⁰

Fourth, BZX asserts that one factor that has contributed to the overall efficiency, price discovery, and lower volatility of the bitcoin market is the increase in the number of participants, and subsequently, “the total dollar amount allocated to this market.” BZX’s measure of participation is based on the increase from March 2012 to December 2021 in the number of wallet addresses holding bitcoin.⁶¹

Finally, BZX contends that this increase in the number of participants has resulted in higher liquidity in the bitcoin market, based on the “daily aggregated dollar notional of the bid and ask order books within the first 100 price levels across several of the largest centralized crypto [platforms] from October 2020 to April 2021.” According to BZX, “the dollar notional that is allocated closest to the mid price has increased from around \$230 million to \$860 million over that period, representing a 270% increase in half a year.”⁶² BZX suggests that the “increased notional order book” indicates that there is a “higher degree of consensus” among investors regarding the price of bitcoin, and that this “hampers any attempt of price manipulation by any single large entity.”⁶³ Additionally, according to BZX, the Sponsor found that movements in the bid and ask dollar notional of the bitcoin order book within a six-hour window around “extreme”⁶⁴ price events were indicative of an efficient market, whereby large market movements are “quickly and dynamically absorbed” by a thick order book and market participants’ reactions are “quick to restore the market back to its equilibrium level.”⁶⁵

As with the previous proposals, the Commission here concludes that the

⁵⁹ *See id.* at 73374.

⁶⁰ *See id.*

⁶¹ *See id.* at 73375.

⁶² *See id.*

⁶³ *See id.* at 73376.

⁶⁴ According to BZX, the Sponsor used the top and bottom 0.1% of hourly price changes from October 2020 to April 2021 as events of extreme upward and downward market movements. *See id.*

⁶⁵ *See id.*

record does not support a finding that the bitcoin market is inherently and uniquely resistant to fraud and manipulation.⁶⁶ BZX asserts that, because of how bitcoin trades occur, including through continuous means and through fragmented platforms, arbitrage across the bitcoin platforms essentially helps to keep global bitcoin prices aligned with one another, thus hindering manipulation. The Exchange also provides various statistics from the Sponsor which purport to show that bitcoin prices are closely and increasingly aligned across markets and that any price disparities are quickly arbitrated away. However, as described by BZX, the Sponsor’s statistics are based on aggregated daily or hourly bitcoin prices (for example, according to BZX, the Pearson correlations were calculated using daily bitcoin prices, and cokurtosis was calculated using hourly bitcoin prices). Such data does not capture intra-hour or intra-day price disparities, and provides no information on how long price disparities typically persist. Nor do the Sponsor’s statistics or BZX’s assertions provide any insight into what size or duration of price disparities would be profitable for a would-be manipulator, and thus they do not inform BZX’s conclusion that bitcoin pricing has become “less susceptible to manipulation.”⁶⁷ The

⁶⁶ One commenter questions BZX’s statement about bitcoin’s resistance to fraud and manipulation. *See* letter from Adam Girts, dated November 5, 2021 (“Girts Letter”) (stating that the proposed ETP does not “seem resistant to manipulation” and that the Exchange’s emphasis on the decentralized nature of bitcoin itself “is a red herring.”).

⁶⁷ *See* Amendment No. 1, 86 FR at 73374. Several other deficiencies in the Sponsor’s methodological choices prevent the Commission from agreeing with the Exchange’s conclusions. For example, one measure of cokurtosis uses the *square* of the difference of two random variables from their means, and the squares of the two variables’ standard deviations, and as such, the statistic calculates magnitude, but not direction. If this is the cokurtosis statistic that was used by the Sponsor (Amendment No. 1 does not specify), then while the results may show that the two variables move together, it would not necessarily mean that the two variables move *in the same direction* “in a unanimous manner” (*see id.* at 73369). In addition, by design, the Sponsor’s “%C-Spread” statistic measures the maximum difference among prices (*i.e.*, the highest and lowest) across bitcoin platforms at a given point in time. However, such statistic does not provide any information about the extent of price dispersion among the intermediary prices across bitcoin platforms or whether there is any “intrinsic average” or “consensus price” of bitcoin towards which prices are converging (*see id.* at 73374). Moreover, the Commission is not able to assess the validity of the Sponsor’s claims regarding “higher liquidity” in the bitcoin market, based upon the Sponsor’s calculations of “increased notional order book” and reactions to “extreme” price events, because of insufficient detail in the proposal on the process the Sponsor used to calculate the “dollar notional” of a bitcoin

Commission is thus unable to conclude from the evidence provided that arbitrage across bitcoin markets is efficient, let alone so efficient as to make the markets inherently resistant to fraud and manipulation.⁶⁸

Efficient price arbitrage, moreover, is not sufficient to support the finding that a market is uniquely and inherently resistant to manipulation such that the Commission can dispense with surveillance-sharing agreements.⁶⁹ The Commission has stated, for example, that even for equity options based on securities listed on national securities exchanges, the Commission relies on surveillance-sharing agreements to

platform's order book, the "mid price" on a bitcoin platform, and the "first 100 price levels" across bitcoin platforms (see *id.* at 73375–76). Further, even if the calculations performed by the Sponsor show, as BZX claims, that "there is a higher degree of consensus among investors regarding the price of [b]itcoin" and that "market participants' reactions are quick to restore the market back to its equilibrium level," the Exchange has not demonstrated how either purported showing leads to its conclusion that this "hampers any attempt of price manipulation by any single large entity" (see *id.* at 73376). In particular, the Exchange has not addressed the concerns raised by the Commission in previous proposals, as well as risk factors raised by the Sponsor in the Registration Statement, that actions by a single large, dominant market participant could "have an adverse effect on the price of bitcoin" (see Registration Statement at 24 and *infra* note 71). That is, even if, as the Exchange claims, there is a "high degree of consensus" among investors and market participants are "quick to restore" the market back to its equilibrium level, the trading activity of a dominant market participant could, itself, impact what that consensus/equilibrium will be. These deficiencies undermine the Exchange's arguments that linkages between bitcoin markets, and increasingly efficient arbitrage across such markets, make such markets less susceptible to manipulation.

⁶⁸ In addition, the Registration Statement states: "As the use of digital asset networks increases without a corresponding increase in transaction processing speed of the networks, average fees and settlement times can increase significantly. Bitcoin's network has been, at times, at capacity, which has led to increased transaction fees. . . . Increased fees and decreased settlement speeds . . . could adversely impact the value of the Shares." See Registration Statement at 21. The Registration Statement further states that "the [b]itcoin network faces significant obstacles to increasing the usage of bitcoin without resulting in higher fees or slower transaction settlement times, and attempts to increase the volume of transactions may not be effective . . . which may adversely affect the price of bitcoin and therefore an investment in the Shares." See Registration Statement at 14. BZX does not provide data or analysis to address, among other things, whether such risks of increased fees and bitcoin transaction settlement times may affect the arbitrage effectiveness that BZX asserts. See also *infra* note 81 and accompanying text (referencing statements made in the Registration Statement that contradict assertions made by BZX). And without such data or analysis, the Commission cannot accept BZX's assertions. See *Susquehanna*, 866 F.3d at 447.

⁶⁹ See Winklevoss Order, 83 FR at 37586; SolidX Order, 82 FR at 16256–57; USBT Order, 85 FR at 12601; WisdomTree Order, 86 FR at 69325; Valkyrie Order, 86 FR at 74159–60; Kryptoin Order, 86 FR at 74170; Wise Origin Order, 87 FR at 5531.

detect and deter fraud and manipulation.⁷⁰ Here, the Exchange provides insufficient evidence to support its assertion of efficient price arbitrage across bitcoin platforms, let alone any evidence that price arbitrage in the bitcoin market is novel or unique so as to warrant the Commission dispensing with the requirement of a surveillance-sharing agreement. Moreover, BZX's data regarding the increase in the number of wallet addresses holding bitcoin do not provide any information on the concentration of bitcoin within or among such wallets, or take into account that a market participant with a dominant ownership position would not find it prohibitively expensive to overcome the liquidity supplied by arbitrageurs and could use dominant market share to engage in manipulation.⁷¹

In addition, the Exchange makes the unsupported claim that, to the extent that there are bitcoin platforms engaged in or allowing wash trading or other manipulative activities, market participants will generally ignore those platforms.⁷² However, without the

⁷⁰ See, e.g., USBT Order, 85 FR at 12601; WisdomTree Order, 86 FR at 69329; Valkyrie Order, 86 FR at 74160; Kryptoin Order, 86 FR at 74170; Wise Origin Order, 87 FR at 5531. The Commission also notes that equities that underlie such options trade on U.S. equity markets that are deep, liquid, highly interconnected, and almost entirely automated, and that operate at high speeds measured in microseconds and even nanoseconds. See SEC Staff Report on Algorithmic Trading in U.S. Capital Markets (Aug. 5, 2020), available at: https://www.sec.gov/files/Algo_Trading_Report_2020.pdf; Market Data Infrastructure Proposing Release, Securities Exchange Act Release No. 88216 (Feb. 14, 2020), 85 FR 16726, 16728 (Mar. 24, 2020).

⁷¹ See, e.g., Winklevoss Order, 83 FR at 37584; USBT Order, 85 FR at 12600–01; WisdomTree Order, 86 FR at 69325; Valkyrie Order, 86 FR at 74160; Kryptoin Order, 86 FR at 74170; Skybridge Order, 87 FR at 3783–84; Wise Origin Order, 87 FR at 5531. See also Registration Statement at 24 ("Some entities hold large amounts of bitcoin relative to other market participants, and to the extent such entities engage in large-scale hedging, sales or distributions on non-market terms, or sales in the ordinary course, it could result in a reduction in the price of bitcoin and adversely affect the value of the Shares. . . . As of the date of this [Registration Statement], the largest 100 bitcoin wallets held a substantial amount of the outstanding supply of bitcoin and it is possible that some of these wallets are controlled by the same person or entity. Moreover, it is possible that other persons or entities control multiple wallets that collectively hold a significant number of bitcoin, even if each wallet individually only holds a small amount. As a result of this concentration of ownership, large sales by such holders could have an adverse effect on the market price of bitcoin."); and *supra* note 67.

⁷² See Amendment No. 1, 86 FR at 73370 n.73 ("To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other exchange because

necessary data or other evidence, the Commission has no basis on which to conclude that bitcoin platforms are insulated from prices of others that engage in or permit fraud or manipulation.⁷³ Indeed, the notion that a platform would be insulated from prices on other platforms is contradicted by the Exchange's assertions and the Sponsor's statistical evidence that bitcoin markets are "highly correlated," including during periods of extreme price volatility.⁷⁴

Additionally, the continuous nature of bitcoin trading does not eliminate manipulation risk, and neither do linkages among markets, as BZX asserts.⁷⁵ Even in the presence of continuous trading or linkages among markets, formal (such as those with consolidated quotations or routing requirements) or otherwise (such as in the context of the fragmented, global bitcoin markets), manipulation of asset prices, as a general matter, can occur simply through trading activity that creates a false impression of supply or demand.⁷⁶

Moreover, BZX does not sufficiently contest the presence of possible sources of fraud and manipulation in the bitcoin spot market generally that the Commission has raised in previous orders. Such possible sources have included (1) "wash" trading,⁷⁷ (2) persons with a dominant position in bitcoin manipulating bitcoin pricing,⁷⁸ (3) hacking of the bitcoin network and trading platforms, (4) malicious control of the bitcoin network, (5) trading based on material, non-public information, including the dissemination of false and misleading information, (6) manipulative activity involving the purported "stablecoin" Tether (USDT), and (7) fraud and manipulation at bitcoin trading platforms.⁷⁹

In addition, BZX does not address risk factors specific to the bitcoin blockchain and bitcoin platforms, described in the

participants will generally ignore markets with quotes that they deem non-executable.").

⁷³ See USBT Order, 85 FR at 12601. See also WisdomTree Order, 86 FR at 69325; Kryptoin Order, 86 FR at 74170; Wise Origin Order, 87 FR at 5531.

⁷⁴ See *supra* notes 52–54 and accompanying text.

⁷⁵ See Winklevoss Order, 83 FR at 37585 n.92 and accompanying text. See also WisdomTree Order, 86 FR at 69325–26; Kryptoin Order, 86 FR at 74170; Skybridge Order, 87 FR at 3783–84; Wise Origin Order, 87 FR at 5531.

⁷⁶ See Winklevoss Order, 83 FR at 37585.

⁷⁷ See *supra* notes 72–73 and accompanying text.

⁷⁸ See *supra* note 71 and accompanying text.

⁷⁹ See USBT Order, 85 FR at 12600–01 & nn.66–67 (discussing J. Griffin & A. Shams, *Is Bitcoin Really Untethered?* (October 28, 2019), available at <https://ssrn.com/abstract=3195066> and published in 75 J. Finance 1913 (2020)); Winklevoss Order, 83 FR at 37585–86.

Trust's Registration Statement, that undermine the argument that the bitcoin market is inherently resistant to fraud and manipulation. For example, the Registration Statement acknowledges that "it may be possible for a bad actor to manipulate the [b]itcoin network and hinder transactions"; that "[s]pot markets on which bitcoin trades are relatively new and largely unregulated, and, therefore, may be more exposed to fraud and security breaches than established, regulated exchanges for other financial assets or instruments, which could have a negative impact on the performance of the Trust";⁸⁰ that "[o]ver the past several years, a number of bitcoin spot markets have been closed or faced issues due to fraud, failure, security breaches or governmental regulations"; that "[t]he nature of the assets held at bitcoin spot markets makes them appealing targets for hackers and a number of bitcoin spot markets have been victims of cybercrimes" and "[n]o bitcoin [platform] is immune from these risks"; that "[t]he potential consequences of a spot market's failure or failure to prevent market manipulation could adversely affect the value of the Shares[,] . . . [t]he blockchain infrastructure could be used by certain market participants to exploit arbitrage opportunities through schemes such as front-running, spoofing, pump-and-dump and fraud across different systems, platforms or geographic locations" . . . and "[a]s a result of reduced oversight, these schemes may be more prevalent in digital asset markets than in the general market for financial products"; that "many [bitcoin] spot markets and over-the-counter market venues . . . do not provide the public with significant information regarding their ownership structure, management teams, corporate practices or oversight of customer trading" and "many [bitcoin] spot markets lack certain safeguards put in place by more traditional exchanges to enhance the stability of trading on the exchange"; that "[s]ecurity breaches, cyber-attacks, computer malware and computer hacking attacks have been a prevalent concern in relation to digital assets"; and that the bitcoin blockchain could be vulnerable to a "51% attack," in which a bad actor or actors that control a majority of the processing power dedicated to mining on the bitcoin network may be able to alter the

⁸⁰ BZX expressly acknowledges that "unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight." See Amendment No. 1, 86 FR at 73362.

bitcoin blockchain on which the bitcoin network and bitcoin transactions rely.⁸¹

(ii) Assertions Regarding the Index and the Create/Redeem Process

BZX also argues that the Index, which would be used to value the Trust's bitcoin, is designed to reduce the risk of manipulation based on the Index's methodology.⁸² BZX states that the Index is a U.S. dollar-denominated composite reference rate for the price of bitcoin. The Index price is currently sourced from the following bitcoin platforms selected by the Data Provider based on a combination of qualitative and quantitative metrics: Binance, Bitfinex, Bitflyer, Bittrex, Bitstamp, Coinbase Pro, Gemini, HitBTC, Huobi, Kraken, KuCoin, and Poloniex.⁸³ According to BZX, the Index methodology is intended to determine the fair market value for bitcoin by determining the "principal market" for bitcoin as of 4:00 p.m. ET daily. To rank the credibility and quality of each underlying bitcoin platform, the Data Provider dynamically assigns a score to the key characteristics for each platform.⁸⁴ BZX states that the score determines which platform should be designated as the "principal market" at a given point of time by computing a weighted average of the values assigned to four different platform characteristics: (i) Oversight; (ii) microstructure efficiency; (iii) data transparency; and (iv) data integrity.⁸⁵ The methodology then applies a five-step weighting process for identifying a principal market and the last price on that market.⁸⁶ Following this weighting process, an "executed exchange price" is assigned for bitcoin as of 4:00 p.m. ET. The Data Provider takes the last traded prices at that moment in time on that trading venue for the relevant pair (bitcoin/USD) when determining the Index price.⁸⁷

BZX asserts that the fact that there are multiple bitcoin spot markets that may contribute prices to the Index price makes manipulation more difficult in a well-arbitrated and fractured market, as a malicious actor would need to manipulate multiple spot markets simultaneously to impact the Index price, or dramatically skew the historical distribution of volume between the various platforms.⁸⁸ In

⁸¹ See Registration Statement at 4, 12–13, 18–20, 28. See also Winklevoss Order, 83 FR at 37585.

⁸² See Amendment No. 1, 86 FR at 73378.

⁸³ See *id.* at 73379.

⁸⁴ See *id.*

⁸⁵ See *id.*

⁸⁶ See *id.*

⁸⁷ See *id.* at 73379–80.

⁸⁸ See *id.* at 73380.

addition, BZX asserts that the Data Provider has dedicated resources and committees established to ensure all prices are representative of the market, and that any price challenges will result in an independent analysis of the price. This includes assessing whether the price from the selected platform is biased according to analyses designed to recognize patterns consistent with manipulative activity, such as a quick reversion to previous traded levels following a sharp price change or any significant deviations from the volume weighted average price on a particular platform or pricing on any other eligible platform.⁸⁹ In addition, BZX further represents that, after the "Lukka Prime price"⁹⁰ is generated, the S&P DJI ("Index Provider") performs independent quality checks as a second layer of validation to those employed by the Data Provider, and may submit a price challenge to the Data Provider. In such circumstances, according to BZX, the Data Provider will perform an independent review of the price challenge to ensure the price is representative of the fair value of a particular cryptocurrency.⁹¹

Simultaneously with its assertions regarding the Index, BZX also states that, because the Trust will engage in in-kind creations and redemptions only, the "manipulability of the Index [is] significantly less important."⁹² BZX elaborates further that, "because the Trust will not accept cash to buy bitcoin in order to create new shares or . . . be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important."⁹³

⁸⁹ See *id.* BZX states that, upon detection or external referral of suspect manipulative activities, the case is raised to the Price Integrity Oversight Board. These checks occur on an on-going, intraday basis, and any investigations are typically resolved promptly, in clear cases within minutes and in more complex cases same business day. According to BZX, the evidence uncovered will be turned over to the Data Provider's Price Integrity Oversight Board for final decision and action. The Price Integrity Oversight Board may choose to pick an alternative "primary market" and may exclude such market from future inclusion in the Index methodology or choose to stand by the original published price upon fully evaluating all available evidence. It may also initiate an investigation of prior prices from such markets and shall evaluate evidence presented on a case-by-case basis. See *id.*

⁹⁰ The Exchange appears to use the terms "Lukka Prime price," "Lukka price," and "Index price" interchangeably. The Commission understands these terms to be interchangeable.

⁹¹ See Amendment No. 1, 86 FR at 73380. BZX also notes that the Index Provider provides certain quality assurance mechanisms with respect to "crypto price validation" based on current market conditions, internal system processes, and other assessments. See *id.*

⁹² See *id.* at 73378.

⁹³ See *id.*

According to BZX, when authorized participants create Shares with the Trust, they would need to deliver a certain number of bitcoin per Share (regardless of the valuation used), and when they redeem with the Trust, they would similarly expect to receive a certain number of bitcoin per Share.⁹⁴ As such, BZX argues that, even if the price used to value the Trust's bitcoin is manipulated, the ratio of bitcoin per Share does not change, and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value.⁹⁵ This, according to BZX, not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Index because there is little financial incentive to do so.⁹⁶

Based on assertions made and the information provided, the Commission can find no basis to conclude that BZX has articulated other means to prevent fraud and manipulation that are sufficient to justify dispensing with the requisite surveillance-sharing agreement. First, the record does not demonstrate that the proposed methodology for calculating the Index would make the proposed ETP resistant to fraud or manipulation such that a surveillance-sharing agreement with a regulated market of significant size is unnecessary. Specifically, BZX has not assessed the possible influence that spot platforms not included among the Index's underlying bitcoin platforms would have on the "principal market" that is used to calculate the Index.⁹⁷ And as discussed above, the record does not establish that the broader bitcoin market is inherently and uniquely resistant to fraud and manipulation. Accordingly, to the extent that trading on platforms not directly used to calculate the Index affects prices on the Index's underlying bitcoin platforms, the characteristics of those other platforms—where various kinds of fraud and manipulation from a variety of sources may be present and persist—may affect whether the Index is resistant to manipulation.

Moreover, BZX's assertions that the Index's methodology helps make the Index resistant to manipulation are

⁹⁴ See *id.*

⁹⁵ See *id.*

⁹⁶ See *id.*

⁹⁷ As discussed above, while BZX asserts that bitcoin prices on platforms with wash trades or other activity intended to manipulate the price of bitcoin do not influence the real price of bitcoin, the Commission has no basis on which to conclude that bitcoin platforms are insulated from prices of others that engage in or permit fraud or manipulation. See *supra* notes 72–73 and accompanying text.

contradicted by the Registration Statement's own statements. Specifically, the Registration Statement states, among other things, that "[s]pot markets on which bitcoin trades are relatively new and largely unregulated, and, therefore, may be more exposed to fraud and security breaches than established, regulated exchanges for other financial assets or instruments"; and that "[t]he potential consequences of a spot market's failure or failure to prevent market manipulation could adversely affect the value of the Shares[.] . . . [t]he blockchain infrastructure could be used by certain market participants to exploit arbitrage opportunities through schemes such as front-running, spoofing, pump-and-dump and fraud across different systems, platforms or geographic locations" . . . and "[a]s a result of reduced oversight, these schemes may be more prevalent in digital asset markets than in the general market for financial products."⁹⁸ The Index's underlying bitcoin platforms are a subset of the bitcoin trading venues currently in existence.

The Registration Statement also states, specifically with respect to the Index, that "[p]ricing sources used by the Index are digital asset spot markets that facilitate the buying and selling of bitcoin and other digital assets" and that "[a]lthough many pricing sources refer to themselves as 'exchanges,' they are not registered with, or supervised by, the [Commission] or [Commodity Futures Trading Commission] and do not meet the regulatory standards of a national securities exchange or designated contract market," and "[f]or these reasons, among others, purchases and sales of bitcoin may be subject to temporary distortions or other disruptions . . . [which] could affect the price of bitcoin used in Index calculations and, therefore, could adversely affect the bitcoin price as reflected by the Index." The Sponsor further states in the Registration Statement that "[t]he Index is based on various inputs which include price data from various third-party bitcoin spot markets" and that "[t]he [index provider] does not guarantee the validity of any of these inputs, which may be subject to technological error, manipulative activity, or fraudulent reporting from their initial source."⁹⁹ Moreover, the Exchange describes a process through which the Data Provider may select an "alternative primary market" upon detection or referral of suspect manipulative

⁹⁸ See Registration Statement at 12–13, 32.

⁹⁹ See *id.* at 32.

activities.¹⁰⁰ And, although the Sponsor raises concerns regarding fraud and security of bitcoin platforms, as well as concerns specific to the Index's underlying bitcoin platforms, leading to the potential need for an "alternative" basis for the Index price, the Exchange does not explain how or why such concerns are consistent with its assertion that the Index is resistant to fraud and manipulation.¹⁰¹

The Commission thus concludes that BZX has not demonstrated that the Index methodology makes the proposed ETP resistant to manipulation.

Second, BZX argues that the Data Provider has dedicated resources and has established committees to ensure all prices are representative of the market, and that any price challenges will result in an independent price analysis, which would include assessing whether the price from the selected "principal market" platform is biased according to analyses designed to recognize patterns consistent with manipulative activity.¹⁰² However, the level of oversight of the Index's underlying bitcoin platforms, whose trade flows might contribute to the Index, is not equivalent to the obligations, authority, and oversight of national securities exchanges or futures exchanges and therefore is not an appropriate substitute.¹⁰³ National securities exchanges are required to have rules that are "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest."¹⁰⁴ Moreover, national securities exchanges must file proposed rules with the Commission regarding certain material aspects of their

¹⁰⁰ See Amendment No. 1, 86 FR at 73380.

¹⁰¹ One commenter states that the proposed ETP is "pegging the value to a collection of independent exchanges, who collectively, would be able to manipulate the bitcoin index by manipulation of their own forums." See *Girts Letter*.

¹⁰² See Amendment No. 1, 86 FR at 73380. BZX represents that the Data Provider has also "designed a series of automated algorithms designed to supplement the core Lukka Prime Methodology in enhancing the ability to detect potentially anomalous price activity which could be detrimental to the goal of obtaining a Fair Market Value price that is representative of the market at a point in time." See *id.*

¹⁰³ See also USBT Order, 85 FR at 12603–05; VanEck Order, 86 FR at 64545; WisdomTree Order, 86 FR at 69328; Kryptoin Order, 86 FR at 74173.

¹⁰⁴ See 15 U.S.C. 78f(b)(5).

operations,¹⁰⁵ and the Commission has the authority to disapprove any such rule that is not consistent with the requirements of the Exchange Act.¹⁰⁶ Thus, national securities exchanges are subject to Commission oversight of, among other things, their governance, membership qualifications, trading rules, disciplinary procedures, recordkeeping, and fees.¹⁰⁷ The Index's underlying bitcoin platforms, on the other hand, have none of these requirements (none are registered as a national securities exchange).¹⁰⁸

In addition, although BZX argues that the Data Provider's various procedures of oversight of the Index helps to identify patterns consistent with

manipulative activity, the purported procedures and oversight do not represent a unique measure to resist or prevent manipulation beyond mechanisms that exist in securities or commodities markets.¹⁰⁹

Further, the oversight performed by the Data Provider of the Index's underlying bitcoin platforms is for the purpose of ensuring the accuracy and integrity of the Index.¹¹⁰ Such oversight serves a fundamentally different purpose as compared to the regulation of national securities exchanges and the requirements of the Exchange Act. While the Commission recognizes that this may be an important function in ensuring the integrity of the Index, such requirements do not imbue either the Data Provider or the Index's underlying bitcoin platforms with regulatory authority similar to that the Exchange Act confers upon self-regulatory organizations such as national securities exchanges.¹¹¹

Third, BZX does not explain the significance of the Index's purported resistance to manipulation to the overall analysis of whether the proposal to list and trade the Shares is designed to prevent fraud and manipulation. Even assuming that BZX's argument is that, if the Index is resistant to manipulation, the Trust's NAV, and thereby the Shares as well, would be resistant to manipulation, BZX has not established in the record a basis for such conclusion. That assumption aside, the Commission notes that the Shares would trade at market-based prices in the secondary market, not at NAV, which then raises the question of the significance of the NAV calculation to the manipulation of the Shares.

Fourth, BZX's arguments are contradictory. While arguing that the Index is resistant to manipulation, the Exchange simultaneously downplays the importance of the Index in light of the Trust's in-kind creation and redemption mechanism.¹¹² BZX points out that the Trust will create and redeem Shares in-kind, not in cash, which renders the NAV calculation, and thereby the ability to manipulate NAV, "significantly less important."¹¹³ In

BZX's own words, the Trust will not accept cash to buy bitcoin in order to create Shares or sell bitcoin to pay cash for redeemed Shares, so the price that the Sponsor uses to value the Trust's bitcoin "is not particularly important."¹¹⁴ If the Index that the Trust uses to value the Trust's bitcoin "is not particularly important," it follows that the Index's resistance to manipulation is not material to the Shares' susceptibility to fraud and manipulation. As BZX does not address or provide any analysis with respect to these issues, the Commission cannot conclude that the Index aids in the determination that the proposal to list and trade the Shares is designed to prevent fraudulent and manipulative acts and practices.

Finally, the Commission finds that BZX has not demonstrated that in-kind creations and redemptions provide the Shares with a unique resistance to manipulation. The Commission has previously addressed similar assertions.¹¹⁵ As the Commission stated before, in-kind creations and redemptions are a common feature of ETPs, and the Commission has not previously relied on the in-kind creation and redemption mechanism as a basis for excusing exchanges that list ETPs from entering into surveillance-sharing agreements with significant, regulated markets related to the portfolio's assets.¹¹⁶ Accordingly, the Commission is not persuaded here that the Trust's in-kind creations and redemptions afford it a unique resistance to manipulation.¹¹⁷

creations and redemptions are only available in-kind makes the manipulability of the Index significantly less important."

¹¹⁴ See *id.* (concluding that "because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.")

¹¹⁵ See Winklevoss Order, 83 FR at 37589–90; USBT Order, 85 FR at 12607–08; VanEck Order, 86 FR at 64546; WisdomTree Order, 86 FR at 69329; Kryptoin Order, 86 FR at 74174; Skybridge Order, 87 FR at 3874; Wise Origin Order, 87 FR at 5533.

¹¹⁶ See, e.g., iShares COMEX Gold Trust, Securities Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Securities Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14969, 14974 (Mar. 24, 2006) (SR–Amex–2005–072).

¹¹⁷ Putting aside BZX's various assertions about the nature of bitcoin and the bitcoin market, the Index, and the Shares, BZX also does not address concerns the Commission has previously identified, including the susceptibility of bitcoin markets to potential trading on material, non-public information (such as plans of market participants to significantly increase or decrease their holdings in bitcoin; new sources of demand for bitcoin; the decision of a bitcoin-based investment vehicle on how to respond to a "fork" in the bitcoin blockchain, which would create two different, non-

¹⁰⁵ 17 CFR 240.19b–4(a)(6)(i).

¹⁰⁶ Section 6 of the Exchange Act, 15 U.S.C. 78f, requires national securities exchanges to register with the Commission and requires an exchange's registration to be approved by the Commission, and Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b), requires national securities exchanges to file proposed rules changes with the Commission and provides the Commission with the authority to disapprove proposed rule changes that are not consistent with the Exchange Act. Designated contract markets ("DCMs") (commonly called "futures markets") registered with and regulated by the Commodity Futures Trading Commission ("CFTC") must comply with, among other things, a similarly comprehensive range of regulatory principles and must file rule changes with the CFTC. See, e.g., Designated Contract Markets (DCMs), CFTC, available at <http://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/index.htm>.

¹⁰⁷ See Winklevoss Order, 83 FR at 37597. The Commission notes that the New York State Department of Financial Services ("NYSDFS") has issued "guidance" to supervised virtual currency business entities, stating that these entities must "implement measures designed to effectively detect, prevent, and respond to fraud, attempted fraud, and similar wrongdoing." See Maria T. Vullo, Superintendent of Financial Services, NYSDFS, *Guidance on Prevention of Market Manipulation and Other Wrongful Activity* (Feb. 7, 2018), available at <https://www.dfs.ny.gov/docs/legal/industry/il180207.pdf>. The NYSDFS recognizes that its "guidance is not intended to limit the scope or applicability of any law or regulation" (*id.*), which would include the Exchange Act. Nothing in the record evidences whether the Index's underlying bitcoin platforms have complied with this NYSDFS guidance. Further, as stated previously, there are substantial differences between the NYSDFS and the Commission's regulation. Anti-money laundering ("AML") and know-your-customer ("KYC") policies and procedures, for example, have been referenced in other bitcoin-based ETP proposals as a purportedly alternative means by which such ETPs would be uniquely resistant to manipulation. The Commission has previously concluded that such AML and KYC policies and procedures do not serve as a substitute for, and are not otherwise dispositive in the analysis regarding the importance of, having a surveillance-sharing agreement with a regulated market of significant size relating to bitcoin. For example, AML and KYC policies and procedures do not substitute for the sharing of information about market trading activity or clearing activity and do not substitute for regulation of a national securities exchange. See USBT Order, 85 FR at 12603 n.101. See also, e.g., WisdomTree Order, 86 FR at 69328 n.95; Kryptoin Order, 86 FR at 74173 n.98.

¹⁰⁸ See 15 U.S.C. 78e, 78f.

¹⁰⁹ The Commission has previously considered and rejected similar arguments about the valuation of bitcoin according to a benchmark or reference price. See, e.g., SolidX Order, 82 FR at 16258; Winklevoss Order, 83 FR at 37587–90; USBT Order, 85 FR at 12599–601.

¹¹⁰ See *supra* notes 84–91 and accompanying text.

¹¹¹ See 15 U.S.C. 78f(b).

¹¹² See *supra* notes 92–96 and accompanying text.

¹¹³ See Amendment No. 1, 86 FR at 73378 ("While the Sponsor believes that the Index which it uses to value the Trust's bitcoin is designed to reduce the risk of manipulation based on the methodology further described below, the fact that

(2) Assertions That BZX Has Entered Into a Comprehensive Surveillance-Sharing Agreement With a Regulated Market of Significant Size

As BZX has not demonstrated that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices, the Commission next examines whether the record supports the conclusion that BZX has entered into a comprehensive surveillance-sharing agreement with a regulated market of significant size relating to the underlying assets. In this context, the term “market of significant size” includes a market (or group of markets) as to which (i) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (ii) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.¹¹⁸

As the Commission has stated in the past, it considers two markets that are members of the ISG to have a comprehensive surveillance-sharing agreement with one another, even if they do not have a separate bilateral surveillance-sharing agreement.¹¹⁹ Accordingly, based on the common membership of BZX and the CME in the ISG,¹²⁰ BZX has the equivalent of a comprehensive surveillance-sharing agreement with the CME. However, while the Commission recognizes that the CFTC regulates the CME futures market,¹²¹ including the CME bitcoin futures market, and thus such market is “regulated,” in the context of the proposed ETP, the record does not, as explained further below, establish that the CME bitcoin futures market is a

interchangeable types of bitcoin), or to the dissemination of false or misleading information. See Winklevoss Order, 83 FR at 37585. See also USBT Order, 85 FR at 12600–01; WisdomTree Order, 86 FR at 69329 n.114; Kryptoin Order, 86 FR at 74174 n.107; Skybridge Order, 87 FR at 3872; Wise Origin Order, 87 FR at 5533 n.89.

¹¹⁸ See Winklevoss Order, 83 FR at 37594. This definition is illustrative and not exclusive. There could be other types of “significant markets” and “markets of significant size,” but this definition is an example that provides guidance to market participants. See *id.*

¹¹⁹ See *id.* at 37580 n.19.

¹²⁰ See Amendment No. 1, 86 FR at 73371 n.75 and accompanying text.

¹²¹ While the Commission recognizes that the CFTC regulates the CME, the CFTC is not responsible for direct, comprehensive regulation of the underlying bitcoin spot market. See Winklevoss Order, 83 FR at 37587, 37599. See also WisdomTree Order, 86 FR at 69330 n.118; Kryptoin Order, 86 FR at 74174 n.119; Skybridge Order, 87 FR at 3874 n.80; Wise Origin Order, 87 FR at 5534 n.93.

“market of significant size” as that term is used in the context of the applicable standard here.

(i) Whether There Is a Reasonable Likelihood That a Person Attempting To Manipulate the ETP Would Also Have To Trade on the CME Bitcoin Futures Market To Successfully Manipulate the ETP

The first prong in establishing whether the CME bitcoin futures market constitutes a “market of significant size” is the determination that there is a reasonable likelihood that a person attempting to manipulate the ETP would have to trade on the CME bitcoin futures market to successfully manipulate the ETP.

While BZX states that academic research supports the thesis that CME bitcoin futures pricing leads the spot market,¹²² BZX acknowledges that the literature has presented mixed evidence. BZX states that, on the one hand, an early study by Corbet *et al.* (2018)¹²³ applied four metrics of price discovery to the CME, CBOE, and spot prices using data sampled on a one-minute frequency, and found that price discovery is focused on the spot market.¹²⁴ BZX states that, in another study, Baur and Dimpfl (2019)¹²⁵ use data sampled on a five-minute interval and similarly conclude that price discovery occurs in the spot market.¹²⁶

BZX states that, on the other hand, a study by Kapar and Olmo (2019)¹²⁷ finds contradictory evidence using daily-sampled data, concluding that the CME bitcoin futures market dominates price discovery. BZX states that similarly, Akyildirim *et al.* (2019)¹²⁸ show that bitcoin futures play a significant role in price discovery relative to the spot market.

BZX surmises that one potential reason for the mixed evidence, according to BZX’s interpretation of Hu, Hou and Oxley (2020),¹²⁹ is that

¹²² See Amendment No. 1, 86 FR at 73370.

¹²³ See *id.* at 73371 (citing S. Corbet, B. Lucey, M. Peat, & S. Vigne, *Bitcoin futures—What use are they?*, 172 *Econ. Letters* 23 (2018) (“Corbet *et al.*”).

¹²⁴ See *id.* at 73371.

¹²⁵ See *id.* at 73371 (citing D. Baur & T. Dimpfl, *Price discovery in bitcoin spot or futures?*, 39 *J. Futures Mkts.* 803 (2019)).

¹²⁶ See *id.* at 73371.

¹²⁷ See *id.* at 73371 (citing B. Kapar & J. Olmo, *An analysis of price discovery between Bitcoin futures and spot markets*, 174 *Econ. Letters* 62 (2019) (“Kapar and Olmo”).

¹²⁸ See *id.* at 73371 (citing E. Akyildirim, S. Corbet, P. Katsiampa, N. Kellard & A. Sensoy, *The development of Bitcoin futures: Exploring the interactions between cryptocurrency derivatives*, 34 *Fin. Res. Letters* 101234 (2020)).

¹²⁹ See *id.* at 73371 (citing Y. Hu, Y. Hou & L. Oxley, *What role do futures markets play in Bitcoin pricing? Causality, cointegration and price*

“cointegration relationships may go undetected if the underlying model formulation is constrained to be time-invariant.” BZX states that, as such, Hu, Hou and Oxley “apply time-varying cointegrating coefficients” and “conclude that futures prices Granger-cause spot prices and that futures prices dominate [b]itcoin price discovery.”¹³⁰

BZX further asserts that the bitcoin futures market is by orders of magnitude larger than the entire spot market of all cryptoassets in terms of traded volume, and that, according to a study by the Blockchain Lab of Massachusetts Institute of Technology: “[T]he derivative market leads price discovery of bitcoin more frequently than the spot markets. The spot market is more likely to indicate the direction of the price movement while the derivatives market is more likely to lead the magnitude of the price movement.”¹³¹

BZX also asserts that the bitcoin futures market has processed more than \$1 trillion in futures volume per month since the start of the year. In November 2021, bitcoin futures volume accounted for \$1.58 trillion, while spot volume, in the same time frame, amounted to \$1.4 trillion, including both crypto-only and fiat currency volumes of all cryptoassets, not just bitcoin. In terms of volume just in the last month,¹³² BZX asserts that the bitcoin futures market is 12% larger than the entire spot market. Over the past three months,¹³³ the average monthly spot volume was \$1.3 trillion while the average bitcoin futures volume was significantly greater (approximately 30%) than the spot at \$1.71 trillion.¹³⁴

discovery from a time-varying perspective, 72 *Int’l Rev. of Fin. Analysis* 101569 (2020) (“Hu, Hou and Oxley”).

¹³⁰ See *id.* at 73371.

¹³¹ See *id.* at 73372 (citing L. Eguren, B. Fondufe, C. Hogan, and C. Matthews, *Price Discovery in the Bitcoin Spot and Derivatives Markets*, Massachusetts Institute of Technology Blockchain Lab Program, May 15, 2020 (“Blockchain Lab Paper”), available at: <https://static1.squarespace.com/static/59aae5e9a803bb10bedeb03e/1/5fa2de64862fbd230d09033d/1604509286275/WG19-20PriceDiscoveryintheBitcoinSpot%26DerivativesMarketsComplete.pdf> (last visited Mar. 3, 2022)). This study was performed by MBA students at the MIT Sloan School of Management as part of the Blockchain Lab, an action-learning course offered by MIT. The study considered the relationship between unregulated spot and derivatives bitcoin markets, and which market leads the other in pricing.

¹³² Based on the submission of Amendment No. 1 in December 2021, the Commission understands “last month” to refer to November 2021.

¹³³ Based on the submission of Amendment No. 1 in December 2021, the Commission understands “past three months” to refer to September–November 2021.

¹³⁴ See Amendment No. 1, 86 FR at 73372. That is, according to BZX, since the start of the year, the

In addition, BZX contends that, in the past twelve months, the average monthly futures volume for bitcoin was \$1.89 trillion, while the monthly spot volume for all cryptoassets was \$1.24 trillion.¹³⁵ BZX further states that, as of December 2, 2021, the ratio of bitcoin spot versus futures volume currently stands at 0.17.¹³⁶ BZX concludes that, “where CME bitcoin futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index . . .) would have to participate in the CME [b]itcoin [f]utures market, it follows that a potential manipulator of the Shares would similarly have to transact in the CME [b]itcoin [f]utures market.”¹³⁷

The Commission disagrees. Specifically, the econometric evidence in the record for the proposal does not support the conclusion that an interrelationship exists between the CME bitcoin futures market and the bitcoin spot market such that it is reasonably likely that a person attempting to manipulate the proposed ETP would also have to trade on the CME bitcoin futures market.¹³⁸ While BZX concludes that CME bitcoin futures pricing leads the spot market,¹³⁹ BZX’s own recitation of the literature on the lead-lag relationship and price discovery between bitcoin spot and futures markets underscores that the literature is unsettled.¹⁴⁰ BZX also has

bitcoin futures market is 52% larger than the spot volume of all cryptoassets traded on platforms.

¹³⁵ See *id.*

¹³⁶ See *id.* Put in another way, according to BZX, the bitcoin spot market accounts for 17% of the bitcoin futures market in volume terms.

¹³⁷ See *id.*

¹³⁸ See USBT Order, 85 FR at 12611. Listing exchanges have attempted to demonstrate such an “interrelationship” by presenting the results of various econometric “lead-lag” analyses. The Commission considers such analyses to be central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the CME bitcoin futures market. See *id.* at 12612. See also VanEck Order, 86 FR at 64547; WisdomTree Order, 86 FR at 69330–31; Krypton Order, 86 FR at 74176 n.144; Skybridge Order, 87 FR at 3876 n.101; Wise Origin Order, 87 FR at 5535 n.107.

¹³⁹ See Amendment No. 1, 86 FR at 73372.

¹⁴⁰ See *supra* notes 123–131 and accompanying text. See also, e.g., O. Entrop, B. Frijns & M. Seruset, *The determinants of price discovery on bitcoin markets*, 40 J. Futures Mkts. 816 (2020) (finding that price discovery measures vary significantly over time without one market being clearly dominant over the other); J. Hung, H. Liu & J. Yang, *Trading activity and price discovery in Bitcoin futures markets*, 62 J. Empirical Finance 107 (2021) (finding that the bitcoin spot market dominates price discovery); A. Fassas, S. Papadamou, & A. Koulis, *Price discovery in bitcoin futures*, 52 Res. Int’l Bus. Fin. 101116 (2020) (finding that bitcoin futures play a more important role in price discovery); S. Aleti & B. Mizrach, *Bitcoin spot and futures market microstructure*, 41 J. Futures Mkts. 194 (2021)

not addressed issues that the Commission has raised in past disapproval orders with respect to some of the studies that BZX cites in the present proposal. Specifically, BZX has not addressed the concern that the use of daily price data by Kapar and Olmo and Hu, Hou and Oxley, as opposed to intra-day prices, may hinder the ability to distinguish which market incorporates new information faster;¹⁴¹ or that, as stated in previous disapproval orders,¹⁴² the findings of Hu, Hou and Oxley’s Granger causality analysis are concededly mixed;¹⁴³ or why Hu, Hou and Oxley’s inconclusive evidence that CME bitcoin futures prices lead spot prices—in particular that the months at the end of the paper’s sample period showed that the spot market was the leading market—would not indicate a shift towards prices in the spot market leading the futures market that would be expected to persist into the future.¹⁴⁴

In addition, the Blockchain Lab Paper¹⁴⁵ does not appear to have included CME bitcoin futures in its analysis. Thus, even setting aside methodological and data issues in this unpublished paper and accepting its results at face value, the Blockchain Lab Paper’s results provide no evidence that *the CME* leads price discovery, or that it is reasonably likely that a would-be manipulator would have to trade *on the CME* to successfully manipulate the proposed ETP. According to the paper’s results, the “derivatives market” quoted

(finding that relatively more price discovery occurs on the CME as compared to four spot exchanges); J. Wu, K. Xu, X. Zheng & J. Chen, *Fractional cointegration in bitcoin spot and futures markets*, 41 J. Futures Mkts. 1478 (2021) (finding that CME bitcoin futures dominate price discovery). See also C. Alexander & D. Heck, *Price discovery in Bitcoin: The impact of unregulated markets*, 50 J. Financial Stability 100776 (2020) (finding that, in a multi-dimensional setting, including the main price leaders within futures, perpetuals, and spot markets, CME bitcoin futures have a very minor effect on price discovery; and that faster speed of adjustment and information absorption occurs on the unregulated spot and derivatives platforms than on CME bitcoin futures) (“Alexander & Heck”).

¹⁴¹ See USBT Order, 85 FR at 12613 n.244.

¹⁴² See, e.g., VanEck Order, 86 FR at 64547; WisdomTree Order, 86 FR at 69331; Krypton Order, 86 FR at 74176; Wise Origin Order, 87 FR at 5535.

¹⁴³ The paper finds that the CME bitcoin futures market dominates the spot markets in terms of Granger causality, but that the causal relationship is bi-directional, and a Granger causality episode from March 2019 to June/July 2019 runs from bitcoin spot prices to CME bitcoin futures prices. The paper concludes: “[T]he Granger causality episodes are not constant throughout the whole sample period. Via our causality detection methods, market participants can identify when markets are being led by futures prices and when they might not be.” See Hu, Hou and Oxley, *supra* note 129.

¹⁴⁴ See USBT Order, 85 FR at 12613 n.244.

¹⁴⁵ See *supra* note 131.

by BZX as “lead[ing] price discovery of bitcoin more frequently” were *unregulated* derivatives markets such as OkEX and bitMEX.¹⁴⁶ The Exchange, however, proposes that the CME is the market of significant size, not OkEX, bitMEX, or any other unregulated derivatives market.

The failure to distinguish between the (regulated) CME bitcoin futures market and unregulated bitcoin derivatives markets is also prevalent in the data that BZX cites. None of the “bitcoin futures” market data that BZX provides in support of the first prong of the “market of significant size” determination is specific to *the CME* bitcoin futures market. Nor does BZX provide information establishing what portion of the total “bitcoin futures” market the CME comprises.¹⁴⁷

Moreover, BZX does not provide results of its own analysis and does not present any other data supporting its conclusion.

BZX’s unsupported representations constitute an insufficient basis for approving this proposed rule change. The Commission thus concludes that the information that BZX provides is not a sufficient basis to support a determination that it is reasonably likely that a would-be manipulator of the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP. Therefore, the information in the record also does not establish that the CME bitcoin futures market is a “market of significant size” with respect to the proposed ETP.

(ii) Whether It Is Unlikely That Trading in the Proposed ETP Would Be the Predominant Influence on Prices in the CME Bitcoin Futures Market

The second prong in establishing whether the CME bitcoin futures market constitutes a “market of significant size” is the determination that it is unlikely that trading in the proposed ETP would

¹⁴⁶ See also *supra* note 140 (citing Alexander & Heck’s finding that, in a multi-dimensional price discovery analysis, including the main price leaders within futures, perpetuals, and spot markets, CME bitcoin futures have a very minor effect on price discovery; and that faster speed of adjustment and information absorption occurs on the unregulated spot and derivatives platforms than on CME bitcoin futures).

¹⁴⁷ In addition, BZX fails to address the relationship (if any) between prices on other bitcoin futures markets and the CME bitcoin futures market, the bitcoin spot market, and/or the bitcoin platforms underlying the Index, or where price formation occurs when the entirety of bitcoin futures markets, not just the CME, is considered. See VanEck Order, 86 FR at 64547–48; WisdomTree Order, 86 FR at 69331; Krypton Order, 86 FR at 74176; Wise Origin Order, 87 FR at 5535.

be the predominant influence on prices in the CME bitcoin futures market.¹⁴⁸

BZX asserts that trading in the Shares would not be the predominant force on prices in the CME bitcoin futures market (or spot market) because of the significant volume in the CME bitcoin futures market,¹⁴⁹ the size of bitcoin's market capitalization,¹⁵⁰ and the significant liquidity available in the spot market.¹⁵¹ BZX also asserts that, because the Shares are created in-kind, they are "fully collateralized," and the Shares should remain close to NAV given that investors and market makers would arbitrage any significant price deviations between the price of the Shares and prices in the spot market.¹⁵² BZX further provides that, according to February 2021 data, the cost to buy or sell \$5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.¹⁵³ For a \$10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, BZX provides that a market participant could enter a market buy or sell order for \$10 million of bitcoin and only move the market 0.5 percent.¹⁵⁴ BZX further asserts that more strategic purchases or sales (such as using limit orders and executing through over-the-counter ("OTC"))

bitcoin trade desks) would likely have less obvious impact on the market, which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin.¹⁵⁵ Thus, BZX concludes that the combination of CME bitcoin futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants (including authorized participants creating and redeeming in-kind with the Trust) to buy or sell large amounts of bitcoin without significant market impact, will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or the CME bitcoin futures market.¹⁵⁶

The Commission does not agree. The record does not demonstrate that it is unlikely that trading in the proposed ETP would be the predominant influence on prices in the CME bitcoin futures market. As the Commission has already addressed and rejected one of the bases of BZX's assertion—that CME bitcoin futures leads price discovery¹⁵⁷—it will only address below the other two bases—the overall size of, and the impact of buys and sells on, the bitcoin market.

BZX's assertions about the potential effect of trading in the Shares on the CME bitcoin futures market and bitcoin spot market are general and conclusory, repeating the aforementioned trade volume of the CME bitcoin futures market and the size and liquidity of the bitcoin spot market, as well as the market impact of a large transaction, without any analysis or evidence to support these assertions. For example, there is no limit on the amount of mined bitcoin that the Trust may hold. Yet BZX does not provide any information on the expected growth in the size of the Trust and the resultant increase in the amount of bitcoin held by the Trust over time, or on the overall expected number, size, and frequency of creations and redemptions—or how any of the foregoing could (if at all) influence prices in the CME bitcoin futures market. Thus, the Commission cannot conclude, based on BZX's statements alone and absent any evidence or analysis in support of BZX's assertions, that it is unlikely that trading in the ETP would be the predominant influence on prices in the CME bitcoin futures market.¹⁵⁸

The Commission also is not persuaded by BZX's assertions about the minimal effect a large market order to buy or sell bitcoin would have on the bitcoin market.¹⁵⁹ While BZX concludes by way of a \$10 million market order example that buying or selling large amounts of bitcoin would have insignificant market impact, the conclusion does not analyze the extent of any impact on the CME bitcoin futures market. Even assuming that BZX is suggesting that a single \$10 million order in bitcoin would have immaterial impact on the prices in the CME bitcoin futures market, this prong of the "market of significant size" determination concerns the influence on prices from trading *in* the proposed ETP, which is broader than just trading *by* the proposed ETP. While authorized participants of the Trust might only transact in the bitcoin spot market as part of their creation or redemption of Shares, the Shares themselves would be traded in the secondary market on BZX and other national securities exchanges. The record does not discuss the expected number or trading volume of the Shares, or establish the potential effect of the Shares' trade prices on CME bitcoin futures prices.¹⁶⁰ For example, BZX does not provide any data or analysis about the potential effect the quotations or trade prices of the Shares might have on market-maker quotations in CME bitcoin futures contracts and whether those effects would constitute a predominant influence on the prices of those futures contracts.¹⁶¹

Thus, because BZX has not provided sufficient information to establish both prongs of the "market of significant size" determination, the Commission cannot conclude that the CME bitcoin futures market is a "market of significant size" such that BZX would

¹⁴⁸ See Winklevoss Order, 83 FR at 37594; USBT Order, 85 FR at 12596–97.

¹⁴⁹ BZX states that the CME began to offer trading in bitcoin futures in December 2017. See Amendment No. 1, 86 FR at 73366. According to BZX, nearly every measurable metric related to CME bitcoin futures contracts, which trade and settle like other cash-settled commodity futures contracts, has "trended consistently up since launch and/or accelerated upward in the past year." See *id.* For example, according to BZX, from October 25, 2021, through November 19, 2021, there was approximately \$2.9 billion in notional trading volume in CME bitcoin futures on a daily basis, and notional volume was never below \$1.2 billion per day. See *id.* at 73363. Additionally, BZX states that open interest was over \$4 billion for the entirety of the period, and at one point reached \$5.5 billion. See *id.* According to the Sponsor, the increase in the volume on the CME is reflected in a higher proportion of the bitcoin market share, based on the proportion of the total monthly volume of bitcoin futures traded on the CME in relation to the total spot bitcoin volume on digital asset platforms. See *id.* at 73367. BZX states that that proportion has increased from less than 5% at inception, to more than 20% over three and a half years. See *id.* at 73367–68.

¹⁵⁰ According to BZX, as of December 1, 2021, the total market cap of all bitcoin in circulation was approximately \$1.08 trillion. See *id.* at 73363 n.30.

¹⁵¹ See *id.* at 73372.

¹⁵² See *id.*

¹⁵³ See *id.* According to BZX, these statistics are based on samples of bitcoin liquidity in U.S. dollars (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021. See *id.* at 73372 n.94.

¹⁵⁴ See *id.* at 73372.

¹⁵⁵ See *id.*

¹⁵⁶ See *id.*

¹⁵⁷ See *supra* notes 138–146 and accompanying text.

¹⁵⁸ See VanEck Order, 86 FR at 64548–59; WisdomTree Order, 86 FR at 69332–33; Kryptoin Order, 86 FR at 74177; Skybridge Order, 87 FR at 3879; Wise Origin Order, 87 FR at 5537.

¹⁵⁹ See Amendment No. 1, 86 FR at 73372 ("For a \$10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, a market participant could enter a market buy or sell order for \$10 million of bitcoin and only move the market 0.5%.")

¹⁶⁰ In addition, with respect to the Exchange's assertions that, because the Shares are created in-kind, they are "fully collateralized" and that the Shares should remain close to NAV because investors and market makers would arbitrage any significant price deviations between the price of the Shares and prices in the spot market (see *id.* at 73372), the Exchange's statement relates only to the potential connection between the Shares' trade prices and NAV. It does not speak to any potential connection between the Shares' trade prices and CME bitcoin futures prices, which is the interrelationship relevant to the second prong of the "market of significant size" determination.

¹⁶¹ See VanEck Order, 86 FR at 64549; WisdomTree Order, 86 FR at 69333; Kryptoin Order, 86 FR at 74177; Skybridge Order, 87 FR at 3879; Wise Origin Order, 87 FR at 5537.

be able to rely on a surveillance-sharing agreement with the CME to provide sufficient protection against fraudulent and manipulative acts and practices.

The requirements of Section 6(b)(5) of the Exchange Act apply to the rules of national securities exchanges.

Accordingly, the relevant obligation for a comprehensive surveillance-sharing agreement with a regulated market of significant size, or other means to prevent fraudulent and manipulative acts and practices that are sufficient to justify dispensing with the requisite surveillance-sharing agreement, resides with the listing exchange. Because there is insufficient evidence in the record demonstrating that BZX has satisfied this obligation, the Commission cannot approve the proposed ETP for listing and trading on BZX.

C. Whether BZX Has Met Its Burden To Demonstrate That the Proposal Is Designed To Protect Investors and the Public Interest

BZX contends that, if approved, the proposed ETP would protect investors and the public interest. However, the Commission must consider these potential benefits in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act.¹⁶² Because BZX has not demonstrated that its proposed rule change is designed to prevent fraudulent and manipulative acts and practices, the Commission must disapprove the proposal.

BZX asserts that access for U.S. retail investors to gain exposure to bitcoin via a transparent and U.S. regulated, U.S. exchange-traded vehicle remains limited. Specifically, BZX asserts that current options for U.S. retail investors include paying a potentially high premium (and high management fees) to buy OTC bitcoin funds, to the advantage of more sophisticated investors that are able to create shares at NAV directly with the issuing trust,¹⁶³ facing the

¹⁶² See Winklevoss Order, 83 FR at 37602. See also GraniteShares Order, 83 FR at 43931; ProShares Order, 83 FR at 43941; USBT Order, 85 FR at 12615; WisdomTree Order, 86 FR at 69333; Valkyrie Order, 86 FR at 74163; Kryptoin Order, 86 FR at 74178; Skybridge Order, 87 FR at 3880; Wise Origin Order, 87 FR at 5537.

¹⁶³ BZX states that “[t]he largest OTC Bitcoin Fund has grown its [assets under management or “AUM”] from approximately \$2.6 billion on February 26, 2020, the date on which the Commission issued the disapproval order for the United States Bitcoin and Treasury Investment Trust, to \$37.1 billion on December 1, 2021” See Amendment No. 1, 86 FR at 73364 n.48.

According to BZX, while the price of one bitcoin has increased approximately 690% in the intervening period, the total AUM has increased by approximately 1,540%, indicating that the increase in AUM was created beyond just price appreciation in bitcoin and that investors are buying shares of

technical risk, complexity, and generally high fees associated with buying spot bitcoin, purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks, or through the purchase of bitcoin futures exchange-traded funds.¹⁶⁴ BZX explains that over the past 1.5 years, U.S. investor exposure to bitcoin through OTC bitcoin funds has grown into the tens of billions of dollars and more than a billion dollars of exposure through bitcoin futures exchange-traded funds.¹⁶⁵ With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for bitcoin futures exchange-traded funds and premium/discount volatility and management fees for OTC bitcoin funds. BZX asserts that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Exchange Act and, as such, approving the proposal (and comparable proposals) would provide U.S. investors access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) Reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in bitcoin futures exchange-traded funds and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative for investors to self-custodying spot bitcoin.¹⁶⁶

BZX states that a number of operating companies engaged in unrelated businesses have announced investments as large as \$5.3 billion in bitcoin.¹⁶⁷ BZX argues that, without access to bitcoin ETPs, retail investors seeking investment exposure to bitcoin may purchase shares in these companies in order to gain the exposure to bitcoin.¹⁶⁸ BZX contends that such operating companies, however, are imperfect bitcoin proxies and provide investors with partial bitcoin exposure paired with additional risks associated with whichever operating company they decide to purchase. BZX concludes that investors seeking bitcoin exposure through publicly traded companies are gaining only partial exposure to bitcoin

a fund that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. See *id.*

¹⁶⁴ See *id.* at 73364.

¹⁶⁵ See *id.* at 73378.

¹⁶⁶ See *id.*

¹⁶⁷ See *id.* at 73364 n.49.

¹⁶⁸ See *id.*

and are not fully benefitting from the risk disclosures and associated investor protections that come from the securities registration process.¹⁶⁹

BZX also states that investors in many other countries, including Canada and Brazil, are able to use more traditional exchange-listed and traded products (including exchange-traded funds holding spot bitcoin) to gain exposure to bitcoin, disadvantaging U.S. investors and leaving them with more risky means of getting bitcoin exposure.¹⁷⁰

In essence, BZX asserts that the risky nature of direct investment in the underlying bitcoin and the unregulated markets on which bitcoin and OTC bitcoin funds trade compel approval of the proposed rule change. The Commission disagrees. Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must approve a proposed rule change filed by a national securities exchange if it finds that the proposed rule change is consistent with the applicable requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices—and it must disapprove the filing if it does not make such a finding.¹⁷¹ Thus, even if a proposed rule change purports to protect investors

¹⁶⁹ See *id.*

¹⁷⁰ See *id.* at 73364–65. BZX represents that the Purpose Bitcoin ETF, a retail bitcoin-based ETP launched in Canada, reportedly reached \$1.2 billion in AUM as of October 15, 2021, demonstrating the demand for a North American market listed bitcoin ETP. BZX contends that the Purpose Bitcoin ETF also offers a class of units that is U.S. dollar denominated, which could appeal to U.S. investors. See *id.* at 73364 n.50. In addition, BZX states that investors in other countries, specifically Canada, generally pay lower fees than U.S. retail investors that invest in OTC bitcoin funds due to the fee pressure that results from increased competition among available bitcoin investment options. BZX also argues that, without an approved bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to gain access to bitcoin exposure. BZX believes that, given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange-listed ETP. See *id.* at 73365. BZX further contends that the lack of a U.S.-listed spot bitcoin ETP is not preventing U.S. funds from gaining exposure to bitcoin—several U.S. exchange-traded funds are using Canadian bitcoin ETPs to gain exposure to spot bitcoin—and that approving this proposal “would provide U.S. exchange-traded funds with a U.S.-listed and regulated product to provide such access rather than relying on either flawed products or products listed and primarily regulated in other countries.” See *id.* BZX also states that regulators in other countries have either approved or otherwise allowed the listing and trading of bitcoin-based ETPs. See *id.* at 73365 n.51.

¹⁷¹ See Exchange Act Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C).

from a particular type of investment risk—such as experiencing a potentially high premium/discount by investing in OTC bitcoin funds—the proposed rule change may still fail to meet the requirements under the Exchange Act.¹⁷²

Here, even if it were true that, compared to trading in unregulated bitcoin spot markets, trading a bitcoin-based ETP on a national securities exchange provides some additional protection to investors, the Commission must consider this potential benefit in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act.¹⁷³ As explained above, for bitcoin-based ETPs, the Commission has consistently required that the listing exchange have a comprehensive surveillance-sharing agreement with a regulated market of significant size related to bitcoin, or demonstrate that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The listing exchange has not met that requirement here. Therefore, the Commission is unable to find that the proposed rule change is consistent with the statutory standard.

Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices.¹⁷⁴

For the reasons discussed above, BZX has not met its burden of demonstrating that the proposal is consistent with Exchange Act Section 6(b)(5),¹⁷⁵ and, accordingly, the Commission must disapprove the proposal.¹⁷⁶

D. Other Arguments and Comments

The Exchange makes additional arguments in its Amendment No. 1. The Exchange argues that, based on a review of the Commission's past approvals and disapprovals of ETPs, the applicable

standard does not require the underlying commodity market to be regulated, but rather requires that the listing exchange has in place a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying commodity.¹⁷⁷ The Exchange states that, therefore, the CME bitcoin futures market is the proper market for the Commission to consider in determining whether the proposal is consistent with the Exchange Act.

The Commission does not disagree. As the Commission has clearly and consistently stated, an exchange that lists bitcoin-based ETPs can meet its obligation under Exchange Act Section 6(b)(5) that its rules be designed to prevent fraudulent and manipulative acts and practices by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference bitcoin assets.¹⁷⁸ As discussed in detail in Section III.B.2, the Commission has considered the Exchange's arguments with respect to the CME bitcoin futures market, and the Commission concludes that the Exchange has failed to demonstrate that the CME bitcoin futures market is such a "market of significant size."

The Exchange also argues that it would be inconsistent for the Commission to allow the listing and trading of exchange-traded funds registered under the Investment Company Act of 1940 ("1940 Act") that provide exposure to bitcoin through CME bitcoin futures ("Bitcoin Futures ETFs") while disapproving this proposal.¹⁷⁹ The Exchange asserts that, if the Commission does not deem the CME bitcoin futures market a regulated market of significant size, permitting Bitcoin Futures ETFs to list and trade would be inconsistent with the requirement under the Exchange Act that the listing and trading of the Bitcoin Futures ETFs be designed to prevent fraudulent and manipulative acts and practices as articulated in the Winklevoss Order and other disapproval orders.¹⁸⁰ The Exchange states that, while one may argue that the 1940 Act provides certain investor protections, those protections relate primarily to the composition of board of directors, limitations on leverage, and transactions with affiliates, among others, and thus do not confer additional protections to

investors in relation to the underlying CME bitcoin futures market to justify different regulatory outcomes for Bitcoin Futures ETFs and non-1940 Act-regulated ETPs that hold spot bitcoin.¹⁸¹ The Exchange also adds that the largest Bitcoin Futures ETF has contracts representing about 40 percent of open interest in CME bitcoin futures, which, according to the Exchange, "seems to directly contradict" the "predominant influence" prong in establishing whether the CME bitcoin futures market constitutes a market of significant size.¹⁸² The Exchange further asserts that any concerns related to preventing fraud and manipulation related to spot bitcoin ETPs would "apply equally" to the spot markets underlying the futures contracts held by a Bitcoin Futures ETF.¹⁸³ The Exchange concludes that the only "consistent outcome" would be approving spot bitcoin ETPs on the basis that the CME bitcoin futures market is a regulated market of significant size.¹⁸⁴

¹⁸¹ See *id.* The Exchange further asserts that, to the extent the Commission may view differential treatment of Bitcoin Futures ETFs and non-1940 Act-registered ETPs that hold spot bitcoin as warranted based on concerns about the custody of bitcoin, that concern is mitigated to a significant degree by the custodial arrangements that the Trust has with the Custodian, which the Exchange believes are the same types of policies, procedures, and safeguards in handling spot bitcoin that the Commission has stated that broker-dealers should implement with respect to digital asset securities. The Exchange also asserts that the Custodian's policies, procedures, and controls are consistent with industry best practices and, as a trust company chartered by the NYSDFS, the Custodian is subject to extensive regulation and has among the longest track records in the industry of providing custodial services for digital asset private keys. See *id.* at 73366. But see also *supra* note 107 (regarding the limitations of NYSDFS regulation). In addition, even if the Exchange's assertions regarding custodial arrangements are true, as noted above, see *supra* note 162, the Commission must consider any such potential investor protections in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act. The Exchange has not met such requirements.

¹⁸² See Amendment No. 1, 86 FR at 73366.

¹⁸³ See *id.*

¹⁸⁴ See *id.* The Exchange also makes additional investor protection arguments related to Bitcoin Futures ETFs, namely, that Bitcoin Futures ETFs represent a sub-optimal structure for long-term investors. The Exchange states that the cost of rolling CME bitcoin futures contracts will cause the Bitcoin Futures ETFs to lag the performance of bitcoin itself and, at over a billion dollars in assets under management, would cost U.S. investors hundreds of millions of dollars on an annual basis. The Exchange states that such rolling costs would not be required for spot bitcoin ETPs. The Exchange further states that Bitcoin Futures ETFs have grown so rapidly that they face potentially running into CME position limits, which would force a Bitcoin Futures ETF to invest in non-futures assets for bitcoin exposure and cause potential investor confusion and lack of certainty about what such Bitcoin Futures ETFs are actually holding and change the risk profile associated with such a

¹⁷² See SolidX Order, 82 FR at 16259; VanEck Order, 86 FR at 5450–51; WisdomTree Order, 86 FR at 69344; Kryptoin Order, 86 FR at 74179; Valkyrie Order, 86 FR at 74163; Skybridge Order, 87 FR at 3881; Wise Origin Order, 87 FR at 5538.

¹⁷³ See *supra* note 162.

¹⁷⁴ See 15 U.S.C. 78s(b)(2)(C).

¹⁷⁵ 15 U.S.C. 78f(b)(5).

¹⁷⁶ In disapproving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷⁷ See Amendment No. 1, 86 FR at 73361–62.

¹⁷⁸ See *supra* notes 12 and 13 and accompanying text. See also Wise Origin Order, 87 FR at 5539.

¹⁷⁹ See Amendment No. 1, 86 FR at 73365.

¹⁸⁰ See *id.*

Continued

The Commission disagrees with the premise of these arguments. The proposed rule change, as modified by Amendment No. 1, does not relate to a product regulated under the 1940 Act, nor does it relate to the same underlying holdings as the Bitcoin Futures ETFs. The Commission considers the proposed rule change on its own merits and under the standards applicable to it. Namely, with respect to this proposed rule change, the Commission must apply the standards as provided by Section 6(b)(5) of the Exchange Act, which it has applied in connection with its orders considering previous proposals to list bitcoin-based commodity trusts and bitcoin-based trust issued receipts.¹⁸⁵

Comment letters also address the general nature and uses of bitcoin¹⁸⁶ and the state of regulation of bitcoin markets.¹⁸⁷ Ultimately, however, additional discussion of these topics is unnecessary, as they do not bear on the basis for the Commission's decision to disapprove the proposal.

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR-ChoeBZX-2021-051, as modified by Amendment No. 1, be, and hereby is, disapproved.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022-07193 Filed 4-5-22; 8:45 am]

BILLING CODE 8011-01-P

Bitcoin Futures ETF. *See id.* at 73365. However, as noted above, *see supra* note 162, even if these assertions are true, the Commission must consider any potential investor protections of the proposal in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act. The Exchange has not met such requirements.

¹⁸⁵ *See supra* note 12. *See also* VanEck Order, 86 FR at 64552; Skybridge Order, 87 FR at 3881 n.177.

¹⁸⁶ *See* letter from Sam Ahn, dated August 25, 2021 ("Ahn Letter").

¹⁸⁷ *See* Ahn Letter.

DEPARTMENT OF STATE

[Public Notice: 11705]

Determination With Respect to Assistance to Afghanistan Consistent With the Trafficking Victims Protection Act of 2000

Consistent with section 110 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107) (the "Act") and Presidential Memorandum dated December 21, 2021, I hereby determine:

- That a partial waiver of the restriction described in section 110(d)(1)(A)(i) of the Act with respect to Afghanistan to allow for Economic Support Fund and Global Health Programs assistance would promote the purposes of the Act or is otherwise in the national interest of the United States; and
- That providing the assistance described in section 110(d)(1)(B) of the Act to Afghanistan would promote the purposes of the Act or is otherwise in the national interest of the United States.

This determination, along with the accompanying certification required by section 110(e) of the Act, and the Memorandum of Justification, on which I have relied, shall be transmitted to Congress, and the determination shall be published in the **Federal Register**.

Dated: March 24, 2022.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2022-07305 Filed 4-5-22; 8:45 am]

BILLING CODE 4710-31-P

DEPARTMENT OF STATE

[Public Notice: 11666]

List of Participating Countries and Entities in the Kimberley Process Certification Scheme, Known as "Participants" for the Purposes of the Clean Diamond Trade Act of 2003

AGENCY: Bureau of Economic and Business Affairs.

ACTION: Notice.

SUMMARY: The Department of State is updating the list of Participants eligible for trade in rough diamonds under the Act, and their respective Importing and Exporting Authorities, revising the previously published list of January 8, 2021, to reflect the addition of the Kyrgyz Republic, Mozambique, and Qatar as Participants.

DATES: This notice is effective on April 6, 2022.

FOR FURTHER INFORMATION CONTACT: George Cajati, Bureau of Economic and

Business Affairs, Department of State, (202) 647-2856.

SUPPLEMENTARY INFORMATION: Section 4 of the Clean Diamond Trade Act of 2003, Public Law 108-19 (the "Act") requires the President to prohibit the importation into, or the exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme (KPCS). Under Section 3(2) of the Act, "controlled through the Kimberley Process Certification Scheme" means an importation from the territory of a Participant or exportation to the territory of a Participant of rough diamonds that is either (i) carried out in accordance with the KPCS, as set forth in regulations promulgated by the President, or (ii) controlled under a system determined by the President to meet substantially the standards, practices, and procedures of the KPCS. The referenced regulations are contained at 31 CFR part 592 ("Rough Diamond Control Regulations") (68 FR 45777, August 4, 2003).

Section 6(b) of the Act requires the President to publish in the **Federal Register** a list of all Participants, and all Importing and Exporting Authorities of Participants, and to update the list as necessary. Section 2 of E.O. 13312 of July 29, 2003 delegates this function to the Secretary of State. Section 3(7) of the Act defines "Participant" as a state, customs territory, or regional economic integration organization identified by the Secretary of State. Section 3(3) of the Act defines "Exporting Authority" as one or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate a Kimberley Process Certificate. Section 3(4) of the Act defines "Importing Authority" as one or more entities designated by a Participant into whose territory a shipment of rough diamonds is imported as having the authority to enforce the laws and regulations of the Participant regarding imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

List of Participants

Pursuant to Sections 3 and 6 of the Act, Section 2 of E.O. 13312, Department of State Delegations of Authority No. 245-1 (February 13, 2009), and No. 376 (October 31, 2011), I hereby identify the following entities as Participants under section 6(b) of the Act. Included in this List are the Importing and Exporting Authorities for Participants, as required by Section 6(b)

of the Act. This List is published solely for the purpose of implementing the mandates cited above and does not reflect or prejudice any other regulation or prohibition that may apply with respect to trading, doing business, or engaging in any other transaction with any of the listed countries or entities. This list revises the previously published list of January 8, 2021 to reflect the addition of the Kyrgyz Republic, Mozambique, and Qatar as Participants.

Angola—Ministry of Mineral Resources and Petroleum, Ministry of Trade.
 Armenia—Ministry of Economic Development and Investment.
 Australia—Department of Industry, Innovation and Science (Exporting Authority), Department of Home Affairs (Importing Authority).
 Bangladesh—Export Promotion Bureau.
 Belarus—Ministry of Finance—Precious Metals and Gemstones Department.
 Botswana—Ministry of Minerals, Green Technology and Energy Security—Diamond Hub.
 Brazil—Ministry of Mines and Energy—Secretariat of Geology, Mining and Mineral Processing—National Mining Agency.
 Cambodia—Ministry of Commerce.
 Cameroon—Ministry of Mines—National Permanent Secretariat for the Kimberley Process.
 Canada—Ministry of Natural Resources Canada.
 Central African Republic—Ministry of Mines, Energy and Hydraulics.
 China—General Administration of China Customs; in the Hong Kong Special Administrative Region: Trade and Industry Department (Exporting Authority), Customs and Exercise Department (Importing Authority).
 Congo, Democratic Republic of the—Ministry of Mines—The Center of Expertise, Evaluation and Certification of Precious and Semiprecious Mineral Substances.
 Congo, Republic of the—Ministry of Mines and Geology—Bureau of Expertise, Evaluation and Certification of Precious Mineral Substances.
 Cote D'Ivoire (Ivory Coast)—General Directorate of Customs.
 Eswatini—Office of the Commissioner of Mines.
 European Union—European Commission—Foreign Policy Instruments; in Belgium: Federal Public Service of Economy; in the Czech Republic: General Directorate of Customs; in Germany: Main Customs Office (Exporting Authority), General Directorate for Management VI (Importing Authority); in Italy:

Customs and Monopolies Agency, Anti-Fraud Office; in Ireland: the Kimberley Process and Responsible Minerals Authority—Exploration and Mining Division—Department of Communications, Climate Action and Environment; in Portugal: Tributary and Customs Authority—Licensing Services Directorate; in Romania: National Authority for Consumer Protection—General Department for Precious Metals, Precious Stones and the Kimberley Process.
 Gabon—Permanent Center for the Kimberley Process
 Ghana—Ministry of Lands and Natural Resources—Precious Minerals Marketing Company Limited.
 Guinea—Ministry of Mines and Geology.
 Guyana—Guyana Geology and Mines Commission.
 India—The Gem and Jewellery Export Promotion Council.
 Indonesia—Ministry of Trade—Director General for Foreign Trade.
 Israel—Ministry of Economy and Industry—Office of the Diamond Controller.
 Japan—Ministry of Economy, Trade and Industry—Agency for Natural Resources and Energy Trade and Economic Cooperation Bureau.
 Kazakhstan—Ministry for Investments and Development—Committee for Technical Regulation and Metrology.
 Korea, Republic of (South Korea)—Ministry of Trade, Industry and Energy.
 Kyrgyz Republic—Ministry of Economy and Finance.
 Laos—Ministry of Industry and Commerce—Department of Import and Export.
 Lebanon—Ministry of Economy and Trade.
 Lesotho—Ministry of Mining—Department of Mines—Diamond Control Office.
 Liberia—Ministry of Lands, Mines and Energy.
 Malaysia—Royal Malaysian Customs Department.
 Mali—Ministry of Mines—Office of Expertise, Evaluation and Certification of Rough Diamonds.
 Mauritius—Ministry of Industry, Commerce and Consumer Protection—Trade Division.
 Mexico—Ministry of Economy—Directorate-General for International Trade in Goods.
 Mozambique—Ministry of Mineral Resources and Energy.
 Namibia—Ministry of Mines and Energy—Directorate of Diamond Affairs.
 New Zealand—New Zealand Customs Service.

Norway—Norwegian Customs Service.
 Panama—National Customs Authority.
 Qatar—Qatar Free Zones.
 Russia—Ministry of Finance.
 Sierra Leone—National Minerals Agency, National Revenue Authority.
 Singapore—Ministry of Trade and Industry, Singapore Customs.
 South Africa—South African Diamond and Precious Metals Regulator.
 Sri Lanka—National Gem and Jewellery Authority.
 Switzerland—State Secretariat for Economic Affairs.
 Taipei—Ministry of Economic Affairs—Bureau of Foreign Trade—Import/Export Administration Division.
 Tanzania—Ministry of Energy and Minerals—Commissioner for Minerals.
 Thailand—Ministry of Commerce—Department of Foreign Trade.
 Togo—Ministry of Mines and Energy—Head Office of Mines and Geology.
 Turkey—Borsa Istanbul Precious Metals and Diamond Market.
 Ukraine—Ministry of Finance—State Gemmological Centre of Ukraine.
 United Arab Emirates—Dubai Multi Commodities Center Authority—U.A.E. Kimberley Process Office in the Dubai Airport Free Zone.
 United Kingdom—Foreign, Commonwealth & Development Office—Government Diamond Office
 United States of America—United States Census Bureau (Exporting Authority), United States Customs and Border Protection (Importing Authority).
 Venezuela—Central Bank of Venezuela (Exporting Authority), National Customs and Tax Administration Integrated Service (Importing Authority).
 Vietnam—Ministry of Industry and Trade—Import Export Management Divisions in Hanoi and Ho Chi Minh City.
 Zimbabwe—Minerals Marketing Corporation of Zimbabwe (Exporting Authority), Zimbabwe Revenue Authority (Importing Authority).

Ramin Toloui,

Assistant Secretary, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2022-07312 Filed 4-5-22; 8:45 am]

BILLING CODE 4710-AE-P

DEPARTMENT OF STATE

[Public Notice: 11704]

Designation of Katibat al Tawhid wal Jihad as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(A) of

E.O. 13224 of September 23, 2001, as amended by E.O. 13268 of July 2, 2002, E.O. 13284 of January 23, 2003, and E.O. 13886 of September 9, 2019, (“E.O. 13224”), I hereby determine that the person known as Katibat al Tawhid wal Jihad (also known as KTJ, Khatiba al-Tawhid wal-Jihad, Jannat Oshiklari, and Tawhid and Jihad Brigade) is a foreign person that has committed and poses a significant risk of committing acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to these determinations who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This determination shall be published in the **Federal Register**.

Authority: E.O. 13224, Section 1(a)(ii).

Dated: February 22, 2022.

Antony J. Blinken,
Secretary of State.

[FR Doc. 2022-07304 Filed 4-5-22; 8:45 am]

BILLING CODE 4710-AD-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Continuation and Request for Nominations for the Intergovernmental Policy Advisory Committee on Trade

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for applications.

SUMMARY: The Office of the United States Trade Representative (USTR) is establishing a new four-year charter term and accepting applications from qualified individuals interested in serving as a member of the Intergovernmental Policy Advisory Committee on Trade (IGPAC). The IGPAC is a trade advisory committee that provides general policy advice and guidance to the U.S. Trade Representative on trade policy and development matters that have a significant relationship to the affairs of U.S. state and local governments.

DATES: USTR will accept nominations on a rolling basis for membership on the IGPAC for the four-year charter term beginning in April 2022. To ensure consideration before the new charter term, you should submit your application by May 4, 2022.

FOR FURTHER INFORMATION CONTACT: Sophia Sokolowski, Director for Intergovernmental Affairs and Public Engagement, *Sophia.P.Sokolowski@ustr.eop.gov*, or 202-881-6968.

SUPPLEMENTARY INFORMATION:

1. Background

Section 135(c)(1) of the Trade Act of 1974, as amended (19 U.S.C. 2155(c)(1)), authorizes the President to establish individual general trade policy advisory committees for industry, labor, agriculture, services, investment, defense, small business, and other interests, as appropriate, to provide general policy advice. The President delegated that authority to the U.S. Trade Representative in Executive Order 11846, section 4(d), issued on March 27, 1975. With limited statutory exceptions, the TACA is subject to the provisions of the Federal Advisory Committee Act.

Pursuant to these authorities, the U.S. Trade Representative intends to establish a new four-year charter term for the IGPAC, which will begin in April 2022.

The IGPAC is a discretionary trade advisory committee established to provide general policy advice to the U.S. Trade Representative on trade policy and development matters that have a significant relationship to the affairs of U.S. state and local governments. More specifically, the IGPAC provides general policy advice on issues that may affect U.S. state and local governments including: (1) Negotiating objectives and bargaining positions before entering into trade agreements; (2) the impact of the implementation of trade agreements; (3) matters concerning the operation of any trade agreement once entered into; and (4) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States.

The IGPAC meets as needed, at the call of the U.S. Trade Representative or their designee, or two-thirds of the IGPAC members, depending on various factors such as the level of activity of trade negotiations and the needs of the U.S. Trade Representative.

II. Membership

The IGPAC is composed of not more than 35 members who have expertise in general trade, investment and

development issues and are appointed from U.S. states and localities, and other non-Federal governmental entities. Members represent the executive and legislative branches of state, county, and municipal governments and may hold elective or appointive office. Fostering diversity, equity, inclusion and accessibility (DEIA) is one of the top priorities.

The U.S. Trade Representative appoints IGPAC members for a term that will not exceed the duration of this charter. IGPAC members must be able to obtain and maintain a security clearance in order to serve and have access to classified and trade sensitive documents. They must meet the eligibility requirements described below at the time of appointment and at all times during their term of service. Members serve at the discretion of the U.S. Trade Representative. Individuals can be reappointed for any number of terms.

The U.S. Trade Representative is committed to a trade agenda that advances racial equity and supports underserved communities and will seek advice and recommendations on trade policies that eliminate social and economic structural barriers to equality and economic opportunity, and to better understand the projected impact of proposed trade policies on communities of color and underserved communities. The U.S. Trade Representative strongly encourages diverse backgrounds and perspectives and makes appointments to the IGPAC without regard to political affiliation and in accordance with equal opportunity practices that promote diversity, equity, inclusion, and accessibility. USTR strives to ensure balance in terms of sectors, demographics, regional diversity, and other factors relevant to USTR's needs.

IGPAC members serve without either compensation or reimbursement of expenses. Members are responsible for all expenses they incur to attend meetings or otherwise participate in IGPAC activities.

The U.S. Trade Representative appoints IGPAC members to represent the executive and legislative branches of state, county, and municipal governments. USTR's foremost consideration for applicants is their ability to carry out the goals of section 135(c) of the Trade Act of 1974, as amended. Other criteria include the applicant's knowledge of and expertise in international trade issues as relevant to the work of the IGPAC and USTR.

III. Request for Nominations

USTR is soliciting nominations for membership on the IGPAC. To apply for

membership, an applicant must meet the following eligibility criteria at the time of application and at all times during their term of service as an IGPAC member:

1. The applicant must be a U.S. citizen.
 2. The applicant cannot be a full-time employee of a U.S. governmental entity.
 3. The applicant cannot be registered with the U.S. Department of Justice under the Foreign Agents Registration Act.
 5. The applicant must be able to obtain and maintain a security clearance.
 6. The applicant must represent the executive or legislative branch of a state, county, or municipal government or an organization comprised of or representing these entities.
- In order to be considered for IGPAC membership, interested persons should submit the following to Sophia Sokolowski, Director for Intergovernmental Affairs, at Sophia.P.Sokolowski@ustr.eop.gov:

- Name, title, affiliation, and contact information of the individual requesting consideration.
 - A letter on the entity's letterhead from the sponsoring executive or legislative branch of a state, county, or municipal government, containing a brief description of the manner in which international trade affects the state, county, or municipality and why USTR should consider the applicant for membership.
 - The applicant's personal resume or comprehensive biography.
 - An affirmative statement that the applicant and the entity they represent meet all eligibility requirements.
- USTR will consider applicants who meet the eligibility criteria in accordance with equal opportunity practices that promote diversity, equity, inclusion, and accessibility, based on the following factors:
- Ability to represent the sponsoring executive or legislative branch of a state, county, or municipal government interests on international trade matters.
 - Knowledge of and experience in trade matters relevant to the work of the IGPAC and USTR.
 - How they will contribute to trade policies that eliminate social and economic structural barriers to equality and economic opportunity and to understanding of the projected impact of proposed trade policies on communities of color and underserved communities.
 - Ensuring that the IGPAC is balanced in terms of points of view,

demographics, geography, and entity or organization size.

Sophia Sokolowski,

Director for Intergovernmental Affairs, Office of the United States Trade Representative.

[FR Doc. 2022-07264 Filed 4-5-22; 8:45 am]

BILLING CODE 3290-F2-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No: PHMSA-2022-0009]

Pipeline Safety: Agency Request for Emergency Approval of an Information Collection Associated With the Natural Gas Distribution Infrastructure Safety and Modernization Grant Program

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for emergency approval of a proposed information collection. DOT requests that OMB authorize this collection of information on or before May 14, 2022. Upon receiving the requested six-month emergency approval by OMB, DOT will follow the normal PRA procedures to obtain extended approval for this proposed information collection. The purpose of this collection is to enable eligible municipality and community-owned utilities (not including for-profit entities) to apply for grant assistance under the heading "Department of Transportation—Pipeline and Hazardous Materials Safety Administration—Natural Gas Distribution Infrastructure Safety and Modernization Grant Program" in Public Law 117-58. DOT is requesting emergency approval due to the urgency of making the associated funds available to the municipality and community-owned utilities that meet the eligibility requirements under the law.

DATES: Interested persons are invited to submit comments on or before April 18, 2022.

ADDRESSES: Comments may be submitted in the following ways:

E-Gov Website: <http://www.regulations.gov>. This site allows the public to enter comments on any

Federal Register notice issued by any agency.

Fax: 1-202-493-2251.

E-mail: Comments and questions about the ICR identified below may be transmitted electronically to the Office of Information and Regulatory Affairs (OIRA) at oira_submissions@omb.eop.gov.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590-0001.

Hand Delivery: Room W12-140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., ET, Monday through Friday, except federal holidays.

Instructions: Identify the docket number, PHMSA-2022-0009 at the beginning of your comments. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket or to read background documents or comments, go to <http://www.regulations.gov> at any time or to Room W12-140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., ET, Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: "Comments on: PHMSA-2022-0009." The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

Privacy Act Statement: DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA, 5 U.S.C. 552), CBI is exempt from public

disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 CFR 190.343, you may ask PHMSA to give confidential treatment to information you give to the Agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as “Confidential”; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Submissions containing CBI should be sent to Angela Hill, DOT, PHMSA, 1200 New Jersey Avenue SE, PHP-30, Washington, DC 20590-0001 or at Angela.Hill@dot.gov. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT: Angela Hill by telephone at 202-366-1246, by email at Angela.Hill@dot.gov, or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE, PHP-30, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 2021, the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58) was enacted. Under the heading “Department of Transportation—Pipeline and Hazardous Materials Safety Administration—Natural Gas Distribution Infrastructure Safety and Modernization Grant Program” in title VIII of division J, the Natural Gas Distribution Infrastructure Safety and Modernization Grant Program was established. The stated purpose of the program is for certain utilities “to repair, rehabilitate, or replace its natural gas distribution pipeline system or portions thereof or to acquire equipment to (1) reduce incidents and fatalities and (2) avoid economic losses” by providing grant opportunities to municipality and community-owned utilities (not including for-profit entities). The statutory requirements for PHMSA’s implementation of the program are mandatory, and PHMSA is expected to implement the program as swiftly as possible to reduce incidents, fatalities, and adverse impacts to the public and the environment, particularly in disadvantaged communities.

The statutory requirements of the Natural Gas Distribution Infrastructure

Safety and Modernization Grant Program also establish a 180-day deadline for DOT to publish a notice of funding opportunity with a subsequent 270-day deadline for making awards.

Solicitation for grants under the Natural Gas Distribution Infrastructure Safety and Modernization Grant Program is voluntary. No eligible entity is required to apply. To be eligible, however, municipality and community-owned utilities must meet all the requirements set forth in the law. Therefore, DOT must collect certain information from applicants to determine eligibility and evaluate applications. DOT must also verify the accuracy of grant requests from approved applicants, in accordance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and other laws and regulations governing Federal financial assistance programs, including (but not limited to) the Anti-Deficiency Act, the Federal Funding Accountability and Transparency Act (FFATA), the Payment Integrity Information Act of 2019, and 2 CFR part 200, among others. In accordance with the IIJA, DOT must not award more than 12.5 percent of the funds available under the Natural Gas Distribution Infrastructure Safety and Modernization Grant Program to a single municipality or community-owned utility.

DOT anticipates using an online, web-based system to collect the applicant information for the notice of funding opportunity which will include the following information:

- Legal name of the applicant (*i.e.*, the legal name of the business entity), as well as any other identities under which the applicant may be doing business.
- Address, telephone, and email contact information for the applicant.
- Legal authority under which the applicant is established.
- Name and title of the authorized representative of the applicant (who will attest to the required certifications). DOT may also require the identity of external parties involved in preparation of the application, including outside accountants, attorneys, or auditors who may be assisting the business entity that is applying for assistance under this program.
- The specific statutory criteria that the applicant meets for eligibility under this program. The statute defines eligible applicants to include municipality or community-owned utilities excluding for-profit entities. Accordingly, DOT will require the applicant to identify which of these categories they meet, and how.

- Information regarding the environmental effects caused by the proposed project(s) specific to each site. Further, PHMSA will collect project information on (1) actions to comply with state and Federal environmental, environmental justice, and historic preservation requirements, including the National Environmental Policy Act, and (2) additional mitigation actions to ensure that environmental impacts, such as those from excavation or the use of heavy equipment, are minimal and insignificant.

- Location where the applicant was legally established, created, or organized to do business. This information and supporting documentation will be required to demonstrate how the applicant meets the statutory requirement to be “established, created, or organized in the United States or under the laws of the United States.”

- Other identification numbers, including but not limited to the Employer/Taxpayer Identification Number (EIN/TIN), Unique Entity Identifier under 2 CFR part 25, etc. All applicants will be required to have pre-registered with the System for Award Management at <https://sam.gov/SAM/>.

- Description of the applicant’s business operations, in sufficient detail to demonstrate how the applicant meets the statutory requirement as a municipality or community-owned utility.

- Whether the applicant is currently engaged in any legal proceeding that could jeopardize its ability to fulfill the legal commitments required in statute as conditions for receiving funds under the Natural Gas Distribution Infrastructure Safety and Modernization Grant Program. Examples of such proceedings could include (but are not limited to) any process related to the United States Bankruptcy Code, potential merger or acquisition discussions, or current litigation against the applicant. The application system will request that applicants identify any such issues at a high level and avoid including unnecessary details in the application.

- Whether the applicant is delinquent on any debt to any Federal agency, along with supporting details.

- A sworn certification as to the complete and accurate nature of all information provided, including all supporting documentation, subject to civil or criminal penalties. The specific certification language will include: “I certify under penalty of perjury that the information and certifications provided in the application and its attachments are true and correct. WARNING: Anyone who knowingly submits a false claim or makes a false statement is

subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil penalties. (18 U.S.C. 287, 1001; 31 U.S.C. 3729, 3802).”

Recipients will be required to provide supporting documentation in sufficient detail to substantiate the actual costs, specifically excluding any personally identifiable information (PII) for any individual employees. Recipients will also be required to provide additional information and certifications in support of disbursement requests.

II. Summary of Impacted Collection

Section 1320.8(d), Title 5, Code of Federal Regulations (CFR), requires PHMSA to provide interested members of the public and affected entities an opportunity to comment on information collection and recordkeeping requests. This notice identifies the proposed information collection request that PHMSA will forward to OMB for approval.

The following information is provided for this information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection.

PHMSA will request an emergency approval for this information collection. Upon receiving the requested six-month emergency approval by OMB, DOT will follow the normal PRA procedures to obtain extended approval for this proposed information collection.

PHMSA requests comments on the following information:

Title: Natural Gas Distribution Infrastructure Safety and Modernization Grant Program.

OMB Control Number: Will request from OMB.

Current Expiration Date: TBD.

Type of Request: Emergency approval of an information collection.

Abstract: This information collection covers the collection of applicant data from municipality and community-owned utilities that are interested in applying to receive funds from the “Natural Gas Distribution Infrastructure Safety and Modernization Grant Program.” Solicitation for grants under the Natural Gas Distribution Infrastructure Safety and Modernization Grant Program is voluntary. No eligible entity is required to apply. To be eligible, however, municipality and community-owned utilities must meet all the requirements set forth in the law. Therefore, DOT must collect certain

information from applicants to determine eligibility and evaluate applications. DOT must also verify the accuracy of grant requests from approved applicants, in accordance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and other laws and regulations governing Federal financial assistance programs, including (but not limited to) the Anti-Deficiency Act, the Federal Funding Accountability and Transparency Act (FFATA), the Payment Integrity Information Act of 2019, and 2 CFR part 200, among others. This information collection also covers the collection of data from grant recipients. PHMSA expects to receive approximately 100 applications from potential grantees. PHMSA estimates that it will take the 100 applicants approximately 65 hours to compile and submit the forms required to complete the application process for an annual burden of 6,500 hours. PHMSA estimates that 100 grant recipients will spend 5 hours, annually, submitting post-award reports for an annual burden of 500 hours. Therefore, PHMSA estimates that there will be a total of 200 responses (100 applicants + 100 grant recipients) for an aggregate total annual burden for the information collection of 7,000 hours (6,500 hours for applications + 500 hours for post-award reports).

Affected Public: Municipality and Community-owned Utilities.

Annual Burden:

Estimated number of responses: 200.

Estimated annual burden hours: 7,000.

Frequency of Collection: One-time application, grant reports no more than quarterly, to be followed by disbursement requests and closeout.

Comments are invited on:

(a) The need for this information collection for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) The accuracy of the Agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques; and

(e) Additional information that would be appropriate to collect to inform the reduction in risk to people, property,

and the environment due to excavation damages.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on April 1, 2022 under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2022–07315 Filed 4–5–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Interest Rate Paid on Cash Deposited To Secure U.S. Immigration and Customs Enforcement Immigration Bonds

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning April 1, 2022, and ending on June 30, 2022, the U.S. Immigration and Customs Enforcement Immigration Bond interest rate is .33 per centum per annum.

DATES: Rates are applicable April 1, 2022 to June 30, 2022.

ADDRESSES: Comments or inquiries may be mailed to Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328.

You can download this notice at the following internet addresses: <http://www.treasury.gov> or <http://www.federalregister.gov>.

FOR FURTHER INFORMATION CONTACT:

Ryan Hanna, Manager, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 261006–1328 (304) 480–5120; Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328, (304) 480–5117.

SUPPLEMENTARY INFORMATION: Federal law requires that interest payments on cash deposited to secure immigration bonds shall be “at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum.” 8 U.S.C. 1363(a). Related Federal regulations state that “Interest on cash deposited to secure immigration bonds will be at the rate as determined by the Secretary of the Treasury, but in no case will exceed 3 per centum per annum or be less than zero.” 8 CFR 293.2.

Treasury has determined that interest on the bonds will vary quarterly and will accrue during each calendar quarter at a rate equal to the lesser of the average of the bond equivalent rates on 91-day Treasury bills auctioned during the preceding calendar quarter, or 3 per centum per annum, but in no case less than zero. (80 FR 45018). In addition to this Notice, Treasury posts the current quarterly rate in Table 2b—Interest Rates for Specific Legislation on the TreasuryDirect website.

The Deputy Assistant Secretary for Public Finance, Gary Grippo, having reviewed and approved this document,

is delegating the authority to electronically sign this document to Heidi Cohen, Federal Register Liaison for the Department, for purposes of publication in the **Federal Register**.

Heidi Cohen,

Federal Register Liaison.

[FR Doc. 2022–07307 Filed 4–5–22; 8:45 am]

BILLING CODE 4810-AS-P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2., that the Advisory Committee on Minority Veterans (ACMV) will conduct a virtual site visit on May 3–May 5, 2022, with the Phoenix VA Healthcare System, Phoenix Regional Benefits Office, and National Memorial Cemetery of Arizona via MS Teams. The meeting sessions will begin and end as follows:

Dates	Times	Location
May 3, 2022	11:00 a.m.–3:00 p.m.—Eastern Standard Time (EST)	See MS Teams link and call-in information below.
May 4, 2022	11:00 a.m.–3:00 p.m. EST	See MS Teams link and call-in information below.
May 5, 2022	11:00 a.m.–3:00 p.m. EST	See MS Teams link and call-in information below.

This meeting sessions are open to the public.

The purpose of the Committee is to advise the Secretary on the administration of VA benefits and services to minority Veterans; assess the needs of minority Veterans; and evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee makes recommendations to the Secretary regarding such activities.

On Tuesday, May 3, the Committee will receive briefings from the VISN 22 Network Director, Phoenix VA Healthcare System. On Wednesday, May 4, the Committee will receive briefings from the Phoenix Regional Benefits Office and National Memorial Cemetery of Arizona. On Thursday, May 5, the Committee will conduct a virtual town hall meeting from 12:30 p.m. to 2:00 p.m. (eastern), receive Public Comments from 12:15 p.m. to 12:30 p.m. and conduct the Leadership Exit Briefing.

To access the meeting, please use the links or in information below.

May 3, 2022: ACMV Day 1 May 3 2022

Dial in 1 872–701–0185 Con ID: 974 775 551#

https://teams.microsoft.com/l/meetup-join/19%3ameeting_NTA2Mjg2NDEtNzY5Yi00MGFiLThiYjYtYmI1ZGM4YmU4MGRi%40thread.v2/0?context=%7b%22Tid%22%3a%22e95f1b23-abaf-45ee-821d-b7ab251ab3bf%22%2c%22Oid%22%3a%22b6b2e349-543a-4e81-b2f9-f02c696390ca%22%7d

May 4, 2022: ACMV Day 2 May 4 2022

Dial in 1 872–701–0185 Con ID: 149 098 576#

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZmJiN2QwNzctMjkxMy00YTQ3LWI1NzktZmU5YThlN2ViMTI0%40thread.v2/0?context=%7b%22Tid%22%3a%22e95f1b23-abaf-45ee-821d-b7ab251ab3bf%22%2c%22Oid%22%3a%22b6b2e349-543a-4e81-b2f9-f02c696390ca%22%7d

May 5, 2022: ACMV Day 3 May 5 2022

Dial in 1 872–701–0185 Con ID: 472 361 940#

[https://teams.microsoft.com/l/meetup-join/19%3ameeting_NTA2Mjg2NDEtNzY5Yi00MGFiLThiYjYtYmI1ZGM4YmU4MGRi%40thread.v2/0?context=%7b%22Tid%22%3a%22e95f1b23-abaf-45ee-821d-](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NTA2Mjg2NDEtNzY5Yi00MGFiLThiYjYtYmI1ZGM4YmU4MGRi%40thread.v2/0?context=%7b%22Tid%22%3a%22e95f1b23-abaf-45ee-821d-b7ab251ab3bf%22%2c%22Oid%22%3a%22b6b2e349-543a-4e81-b2f9-f02c696390ca%22%7d)

[b7ab251ab3bf%22%2c%22Oid%22%3a%22b6b2e349-543a-4e81-b2f9-f02c696390ca%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_b7ab251ab3bf%22%2c%22Oid%22%3a%22b6b2e349-543a-4e81-b2f9-f02c696390ca%22%7d)

If you are not able to get into the meeting, try <https://www.microsoft.com/en-us/microsoft-teams/download-app>. Or call USA Toll Number 1 872–701–0185 and enter the Conference ID for each day.

Individuals who speak are invited to submit a 1–2-page summary of their comments no later than April 26, 2022, for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee’s review to Mr. Dwayne E. Campbell, at Dwayne.Campbell3@va.gov. Any member of the public seeking additional information should contact Mr. Campbell or Mr. Ronald Sagudan (202) 461–6191.

Dated: April 1, 2022.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–07256 Filed 4–5–22; 8:45 am]

BILLING CODE 8320-01-P



FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Parts 52, 75, 78, et al.

Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52, 75, 78 and 97**

[EPA-HQ-OAR-2021-0668; FRL 8670-01-OAR]

RIN 2060-AV51

Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: This action proposes Federal Implementation Plan (FIP) requirements to address twenty-six states' obligations to eliminate significant contribution to nonattainment, or interference with maintenance, of the 2015 ozone National Ambient Air Quality Standard (NAAQS) in other states. The U.S. Environmental Protection Agency (EPA) is proposing this action under the "good neighbor" or "interstate transport" provision of the Clean Air Act (CAA or Act). The Agency proposes establishing nitrogen oxides emissions budgets requiring fossil fuel-fired power plants in 25 states to participate in an allowance-based ozone season trading program beginning in 2023. The Agency is also proposing to establish nitrogen oxides emissions limitations applicable to certain other industrial stationary sources in 23 states with an earliest possible compliance date of 2026. These industrial source types are: Reciprocating internal combustion engines in Pipeline Transportation of Natural Gas; kilns in Cement and Cement Product Manufacturing; boilers and furnaces in Iron and Steel Mills and Ferroalloy Manufacturing; furnaces in Glass and Glass Product Manufacturing; and high-emitting equipment and large boilers in Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills.

DATES: Comments must be received on or before June 6, 2022.

Public Hearing: The EPA will hold a virtual public hearing on April 21, 2022. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

Information Collection Request (ICR): Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before May 6, 2022.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2021-0668; via the Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID-19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

The virtual public hearing will be held on April 21, 2022. The virtual public hearing will convene at 10 a.m. Eastern Time (ET) and will conclude at 7 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. For information or questions about the public hearing, please contact Ms. Holly DeJong at Dejong.holly@epa.gov. The EPA will announce further details at <https://www.epa.gov/csapr/csapr-2015-ozone-naaqs>. Refer to the **SUPPLEMENTARY INFORMATION** section for additional information.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Selbst, Air Quality Policy Division, Office of Air Quality Planning and Standards (C539-01), Environmental Protection Agency, 109 TW Alexander Drive, Research Triangle Park, NC 27711; telephone number: (919)-541-3918; email address: Selbst.elizabeth@epa.gov.

SUPPLEMENTARY INFORMATION:**Preamble Glossary of Terms and Abbreviations**

The following are abbreviations of terms used in the preamble.

2016v1 2016 Version 1 Emissions Modeling Platform
2016v2 2016 Version 2 Emissions Modeling Platform

4-Step Framework 4-Step Interstate Transport Framework
ACS American Community Survey
AEO Annual Energy Outlook
AQAT Air Quality Assessment Tool
AQMTSD Air Quality Modeling Technical Support Document
BACT Best Available Control Technology
BPT Benefit Per Ton
CAA or Act Clean Air Act
CAIR Clean Air Interstate Rule
CBI Confidential Business Information
CCR Coal Combustion Residual
CDC Centers for Disease Control and Prevention
CEMS Continuous Emissions Monitoring Systems
CES Clean Energy Standards
CHP Combined Heat and Power
CMDB Control Measures Database
CMV Commercial Marine Vehicle
CoST Control Strategy Tool
CPT Cost Per Ton
CSAPR Cross-State Air Pollution Rule
EGU Electric Generating Unit
EIA U.S. Energy Information Agency
EISA Energy Independence and Security Act
ELG Effluent Limitation Guidelines
E.O. Executive Order
EPA or the Agency United States Environmental Protection Agency
FFS Finding of Failure To Submit
FIP Federal Implementation Plan
GIS Geographic Information System
HDGHG Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles
HEDD High Electricity Demand Days
ICI Industrial, Commercial, and Institutional
I/M Inspection and Maintenance
IPM Integrated Planning Model
LNB Low-NO_x Burners
MJO Multi-Jurisdictional Organization
MOVES Motor Vehicle Emission Simulator
MSAT2 Mobile Source Air Toxics Rule
MWC Municipal Waste Combustor
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NEEDS National Electric Energy Data System
NEI National Emissions Inventory
NESHAP National Emissions Standards for Hazardous Air Pollutants
No SISNOSE No Significant Economic Impact on a Substantial Number of Small Entities
Non-EGU Non-Electric Generating Unit
NO_x Nitrogen Oxides
NSPS New Source Performance Standard
NREL National Renewable Energy Lab
NTTAA National Technology Transfer and Advancement Act
OFA Over-Fire Air
OMB United States Office of Management and Budget
OSAT/APCA Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis
OTC Ozone Transport Commission
OTR Ozone Transport Region
OTSA Oklahoma Tribal Statistical Area
PEMS Predictive Emissions Monitoring Systems

PM_{2.5} Fine Particulate Matter
 ppb parts per billion
 ppm parts per million
 ppmvd parts per million by volume, dry
 PRA Paperwork Reduction Act
 RACT Reasonably Available Control Technology
 RFA Regulatory Flexibility Act
 RICE Reciprocating Internal Combustion Engines
 ROP Rate of Progress
 RPS Renewable Portfolio Standards
 RRF Relative Response Factor
 SAFE Safer Affordable Fuel-Efficient Vehicles Rule
 SAFETEA Safe, Accountable, Flexible, Efficient, Transportation Equity Act
 SCR Selective Catalytic Reduction
 SIP State Implementation Plan
 SMOKE Sparse Matrix Operator Kernel Emissions
 SNCR Selective Non-Catalytic Reduction
 SO₂ Sulfur Dioxide
 tpd ton per day
 TSD Technical Support Document
 UMRA Unfunded Mandates Reform Act
 VMT Vehicle Miles Traveled
 VOCs Volatile Organic Compounds
 WRAP Western Regional Air Partnership
 WRF Weather Research and Forecasting

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I. Executive Summary

This proposed rule would resolve the interstate transport obligations of 26 states under CAA section 110(a)(2)(D)(i)(I), referred to as the “good neighbor provision” or the “interstate transport provision” of the Act, for the 2015 ozone NAAQS. On October 1, 2015, the EPA revised the primary and secondary 8-hour standards for ozone to 70 parts per billion (ppb).¹ States were required to provide ozone infrastructure State Implementation Plan (SIP) submissions to fulfill interstate transport obligations for the 2015 ozone NAAQS by October 1, 2018.

The EPA proposes to make a finding that interstate transport of ozone precursor emissions from 26 upwind states (Alabama, Arkansas, California, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming) is significantly contributing to downwind nonattainment or interfering with maintenance of the 2015 ozone NAAQS in other states, based on projected nitrogen oxides (NO_x) emissions in the 2023 ozone season. The EPA is proposing to issue FIP requirements to eliminate interstate transport of ozone precursors from these 26 states that significantly contributes to nonattainment or interferes with maintenance of the NAAQS in other states.

The EPA is proposing FIPs for 23 states for which the Agency has not approved an ozone transport SIP that was submitted for the 2015 ozone NAAQS: Alabama, Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Tennessee, Texas, Utah, West Virginia, Wisconsin, and Wyoming. In this proposed rule, the EPA is proposing to issue FIPs for two states—Pennsylvania and Virginia—for which the EPA issued a Finding of Failure to Submit for 2015 ozone transport SIPs with an effective date of January 6, 2020. Under CAA

section 301(d)(4), the EPA proposes to extend FIP requirements to apply in Indian country located within the upwind geography of the proposed rule, including Indian reservation lands and other areas of Indian country over which the EPA or a tribe has demonstrated that a tribe has jurisdiction.² The EPA is also proposing a FIP for Delaware and an error correction for the Agency’s May 1, 2020, approval at 85 FR 25307 of the interstate transport elements for Delaware’s October 11, 2018, and December 26, 2019, ozone infrastructure SIP submissions.

In this proposed rule, the EPA proposes to establish new ozone season NO_x emissions budgets beginning in 2023 for Electric Generating Unit (EGU) sources. The EPA is also proposing to establish emissions limitations beginning in 2026 for certain other industrial stationary sources (referred to generally as “non-Electric Generating Units” (non-EGUs)). Taken together, these strategies will fully eliminate the covered states’ significant contribution to downwind ozone air quality problems in other states.

The EPA proposes to implement the necessary emissions reductions as follows. The proposed FIP requirements establish ozone season NO_x emissions budgets for EGUs in 25 states (Alabama, Arkansas, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming) and require EGUs in these states to participate in a revised version of the Cross-State Air Pollution Rule (CSAPR) NO_x Ozone Season Group 3 Trading Program that was previously established in the Revised CSAPR Update.³ The EPA proposes to amend existing FIPs for 12 states currently participating in the CSAPR NO_x Ozone Season Group 3 Trading Program (Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia) to replace their existing emissions budgets established in the Revised CSAPR Update (with respect to the 2008 ozone NAAQS) with new

² In general, specific tribal names or reservations are not identified separately in this proposal except as needed. See Section IV.C.2 of this notice for further discussion.

³ As explained in Section VI.C.1 of this notice, EPA proposes finding that EGU sources within the State of California are sufficiently controlled such that no further emissions reductions are needed from them to eliminate significant contribution to downwind states.

¹ See 80 FR 65291 (October 26, 2015).

emissions budgets. For eight states currently covered by the CSAPR NO_x Ozone Season Group 2 Trading Program under SIPs or FIPs, the EPA is proposing to issue new FIPs for two states (Alabama and Missouri) and amend existing FIPs for six states (Arkansas, Mississippi, Oklahoma, Tennessee, Texas, and Wisconsin) to transition EGU sources in these states from the Group 2 program to the revised Group 3 trading program, beginning with the 2023 ozone season. EPA proposes to issue new FIPs for five states not currently covered by any CSAPR NO_x ozone season trading program: Delaware, Minnesota, Nevada, Utah, and Wyoming.

Under this proposed rulemaking, emissions reductions in the selected control stringency would be achieved as soon as they are available, some of which are scheduled to occur by the 2023 ozone season and prior to the August 3, 2024, attainment date for areas classified as Moderate nonattainment for the 2015 ozone NAAQS, and the rest of which occur as soon as possible thereafter through the 2026 ozone season, prior to the August 3, 2027, attainment date for areas classified as Serious nonattainment for the 2015 ozone NAAQS. As discussed in Section VII.A.2 of this notice, the EPA proposes to find that the 2026 ozone season is as expeditious as practicable to implement substantial emissions reductions from potential new post-combustion control installations at EGUs as well as from installation of new pollution controls at non-EGUs.

These EGU emissions reductions are scheduled to begin in the 2026 ozone season based on the feasibility of control installation for EGUs in 22 states that remain linked to downwind nonattainment and maintenance receptors in that year. These 22 states are: Arkansas, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming. The additional emissions reductions required for these states are based primarily on the potential retrofit of additional post-combustion controls for NO_x on most coal steam EGUs and a portion of oil/gas steam EGUs that are currently lacking such controls.

In this proposed rule, the EPA introduces additional features to the allowance-based trading program approach for EGUs, including dynamic adjustments of the emissions budgets over time and backstop daily emissions

rate limits for most coal-fired units, that will help maintain control stringency over time and improve emissions performance at individual units, providing further assurance that existing pollution controls will be operated during the ozone season and that the emission reductions necessary to meet good neighbor requirements will be achieved.

The EPA proposes to find that NO_x emissions from non-EGU sources are significantly contributing to nonattainment or interfering with maintenance of the 2015 ozone NAAQS and that cost-effective controls for NO_x emissions reductions are available in certain industrial source categories that would result in meaningful air quality improvements in downwind receptors. The EPA proposes to require emissions limitations beginning in 2026 for non-EGUs located within 23 states: Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming. The proposed rule establishes NO_x emissions limitations during the ozone season for the following unit types for sources in non-EGU industries: Reciprocating internal combustion in Pipeline Transportation of Natural Gas sources; kilns in Cement and Cement Product Manufacturing sources; boilers and furnaces in Iron and Steel Mills and Ferroalloy Manufacturing sources; furnaces in Glass and Glass Product Manufacturing sources; and high-emitting equipment and large boilers in Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills.

A. Purpose of the Regulatory Action

The purpose of this rulemaking is to protect public health and the environment by reducing interstate transport of certain air pollutants that significantly contribute to nonattainment, or interfere with maintenance, of the 2015 ozone NAAQS in other states. Ground-level ozone has detrimental effects on human health as well as vegetation and ecosystems. Acute and chronic exposure to ozone in humans is associated with premature mortality and a number of morbidity effects, such as asthma exacerbation. Ozone exposure can also negatively impact ecosystems by limiting tree growth, causing foliar injury, and changing ecosystem community composition. Section IV of this proposed rule provides additional

evidence of the harmful effects of ozone exposure on human health and the environment. Studies have established that ozone air pollution can be transported over hundreds of miles, with elevated ground-level ozone concentrations occurring in rural and metropolitan areas.^{4,5} Assessments of ozone control approaches have concluded that control strategies targeting reduction of NO_x emissions are an effective method to reduce regional-scale ozone transport.⁶

CAA section 110(a)(2)(D)(i)(I) requires states to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance in any other state with respect to any primary or secondary NAAQS.⁷ States fulfill their primary responsibility to address interstate transport emissions under the good neighbor provision by submitting SIPs containing enforceable emission limitations and other control measures, means, or techniques required to address the interstate transport provision. Within 3 years of the EPA promulgating a new or revised NAAQS, states are required to provide infrastructure SIP submittals, including good neighbor SIPs. See CAA section 110(a)(1) and (2). When states do not submit approvable interstate transport SIPs or fail to submit interstate transport SIPs by the statutory deadline, the CAA requires the EPA to issue FIPs to ensure that states eliminate their significant contribution to downwind air quality problems under the good neighbor provision. See generally CAA section 110(k) and 110(c). As such, in this proposed rule, the EPA is proposing requirements to fully address good neighbor obligations for these states for the 2015 ozone NAAQS under its authority to promulgate FIPs under CAA section 110(c).

It is appropriate to issue this proposal at this time for at least three reasons. First, this proposal will ensure that necessary emissions reductions to eliminate significant contribution are achieved as expeditiously as practicable. The EPA's anticipated timing will provide for all possible emissions reductions to go into effect

⁴ Bergin, M.S. et al. (2007) Regional air quality: Local and interstate impacts of NO_x and SO₂ emissions on ozone and fine particulate matter in the eastern United States. *Environmental Sci & Tech.* 41: 4677–4689.

⁵ Liao, K. et al. (2013) Impacts of interstate transport of pollutants on high ozone events over the Mid-Atlantic United States. *Atmospheric Environment* 84, 100–112.

⁶ See 82 FR 51238, 51248 (November 3, 2017) [citing 76 FR 48208, 48222 (August 8, 2011)] and 63 FR 57381 (October 27, 1998).

⁷ 42 U.S.C. 7410(a)(2)(D)(i)(I).

beginning in the 2023 ozone season, which is aligned with the next upcoming attainment date of August 3, 2024, for areas classified as Moderate nonattainment under the 2015 ozone standard. Additional emissions reductions that the EPA finds not possible to implement by that attainment date are proposed to take effect as expeditiously as practicable, with the full suite of emissions reductions taking effect by the 2026 ozone season, which is aligned with the August 3, 2027, attainment date for areas classified as Serious nonattainment under the 2015 ozone NAAQS. As explained in sections V.A, VI, and VII.A of this proposed rule, these proposed timeframes for eliminating significant contribution are consistent with the provisions of title I of the CAA. Second, this proposal will provide states with as much information as the EPA can supply at this time to support their ability to submit SIP revisions to achieve the emissions reductions the EPA believes necessary to eliminate significant contribution. Third, for all of the states included in this proposed rule, the EPA's modeling and analysis indicate that additional emissions reductions beyond those which are provided in any state's 2015 ozone transport SIP are necessary to eliminate significant contribution.

The EPA anticipates that the states covered in this proposed FIP rulemaking may not have adequate provisions in their SIPs to address their interstate transport obligations for the 2015 ozone NAAQS. As discussed in Section IV.B.2 of this proposed rule, the EPA has, for certain states, made findings that the state failed to submit a complete good neighbor SIP revision for the 2015 ozone NAAQS. For certain other states, the EPA has proposed, but has not finalized, actions disapproving good neighbor SIP revisions. And for other states, the EPA has not yet proposed action on their good neighbor SIP submittals, but these submittals are currently under review, and EPA intends to act on these submittals in the coming months. The EPA will not finalize this proposed FIP action for any state for which it has not taken final action either disapproving that state's good neighbor SIP submittal or finding that the state failed to submit a complete SIP.

The EPA conducted air quality modeling for future analytic years to identify (1) the downwind areas that are expected to have trouble attaining or maintaining the 2015 ozone NAAQS in the future and (2) the contribution of ozone transport from upwind states to the downwind air quality problems.

Section V of this proposed rule provides a full description of the results of EPA's air quality modeling and relevant analyses for the proposed rulemaking. Based on EPA's air quality analysis, a total of 27 upwind states are linked above the 1 percent of the NAAQS threshold to downwind air quality problems in other states. The EPA had previously approved 2015 ozone transport SIPs submitted by two of these states—Oregon and Delaware—and proposes in this proposed rule to issue an error correction for its prior approval of Delaware's 2015 ozone transport SIP (see Section IV.C.1 of this notice for additional information on the proposed error correction). The EPA is not proposing any change to its prior approval of Oregon's 2015 ozone transport SIP, a determination which is further described in Section V.F of this proposed rule.

In this proposed rule, the EPA is proposing to issue FIP requirements for 26 states, which include emissions reductions for EGU sources within the borders of 25 states (described in Section VII.B of this proposed rule) and include emissions reductions for non-EGU sources within the borders of 23 states (described in Section VII.C in this proposed rule). Based on EPA's assessment of remaining air quality issues and additional emissions control strategies, the EPA further proposes to find that the EGU and non-EGU NO_x emissions reductions required in the proposed rule would fully eliminate these states' significant contributions to downwind air quality problems for the 2015 ozone NAAQS. By eliminating significant contribution from these upwind states, this rule, if finalized as proposed, will make substantial and meaningful improvements in air quality by reducing ozone levels at the identified downwind receptors as well as many other areas of the country.

1. Emissions Limitations for EGUs Established by the Proposed Rule

In this proposed rule, the EPA proposes to issue FIP requirements that include new NO_x ozone season emissions budgets for EGU sources within the borders of the 25 states listed in Table I.A–1, with implementation of these emissions budgets beginning in the 2023 ozone season. The EPA proposes to find that these emissions reductions are necessary to address upwind states' interstate transport obligations for the 2015 ozone NAAQS.

TABLE I.A–1—PROPOSED LIST OF 25 COVERED STATES FOR EGU EMISSIONS REDUCTIONS FOR THE 2015 8-HOUR OZONE NAAQS

State
Alabama
Arkansas
Delaware
Illinois
Indiana
Kentucky
Louisiana
Maryland
Michigan
Minnesota
Mississippi
Missouri
Nevada
New Jersey
New York
Ohio
Oklahoma
Pennsylvania
Tennessee
Texas
Utah
Virginia
West Virginia
Wisconsin
Wyoming

The EPA proposes to expand the CSAPR NO_x Ozone Season Group 3 Trading Program beginning in the 2023 ozone season. Specifically, the FIPs would require power plants within the borders of the 25 states listed in Table I.A–1 to participate in a revised version of the CSAPR NO_x Ozone Season Group 3 Trading Program created by the Revised CSAPR Update. Affected EGUs within the borders of twelve states currently participating in the Group 3 Trading Program under FIPs or SIPs would remain in the program, with revised provisions beginning in the 2023 ozone season, under this proposed rule: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. The FIPs would also require affected EGUs within the borders of eight states currently covered by the CSAPR NO_x Ozone Season Group 2 Trading Program (the "Group 2 trading program") under existing FIPs or existing SIPs to transition from the Group 2 program to the revised Group 3 trading program beginning with the 2023 control period: (Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin).⁸ Finally, the EPA is

⁸ Six of these eight states (Arkansas, Mississippi, Oklahoma, Tennessee, Texas, and Wisconsin) currently participate in the federal Group 2 trading program pursuant to the FIPs finalized in the CSAPR Update, so the FIPs proposed in this rulemaking would amend the existing FIPs for these

proposing to issue new FIPs for EGUs within the borders of five states not currently covered by any CSAPR trading program for seasonal NO_x emissions: Delaware, Minnesota, Nevada, Utah, and Wyoming. If the proposed FIP is finalized, sources in these states would enter the Group 3 trading program in the 2023 control period following the effective date of the final rule.⁹ In all cases, if the state submits and the EPA approves a SIP revision that would fully achieve the emissions reductions needed to meet the state's good neighbor obligations with respect to the 2015 ozone NAAQS before a final rule is promulgated in this rulemaking, the proposed FIP requirements summarized above would not be finalized. Refer to Section VII.B of this proposed rule for details on EGU regulatory requirements.

2. Emissions Limitations for Non-EGU Stationary Point Sources Established by the Proposed Rule

In this proposed rule, the EPA proposes to issue FIP requirements that include new NO_x emissions limitations for non-Electric Generating Unit (non-EGU) sources in 23 states, with earliest possible compliance dates for these emissions limitations beginning in 2026. The EPA proposes to require emissions reductions from non-EGU sources to address interstate transport obligations for the 2015 ozone NAAQS for the 23 states listed in Table I.A-2.

TABLE I.A-2—PROPOSED LIST OF 23 COVERED STATES FOR NON-EGU EMISSIONS REDUCTIONS FOR THE 2015 8-HOUR OZONE NAAQS

State
Arkansas
California
Illinois
Indiana
Kentucky
Louisiana
Maryland
Michigan
Minnesota
Mississippi
Missouri
Nevada
New Jersey
New York

states. The other two states (Alabama and Missouri) have already replaced the FIPs finalized in the CSAPR Update with approved SIP revisions that require their EGUs to participate in state Group 2 trading programs integrated with the federal Group 2 trading program, so the FIPs proposed in this action would constitute new FIPs for these states, and the EPA would cease implementation of the state Group 2 trading programs included in the two states' SIPs.

⁹ Two states, Kansas and Iowa, will remain in the Group 2 Trading Program.

TABLE I.A-2—PROPOSED LIST OF 23 COVERED STATES FOR NON-EGU EMISSIONS REDUCTIONS FOR THE 2015 8-HOUR OZONE NAAQS—Continued

State
Ohio
Oklahoma
Pennsylvania
Texas
Utah
Virginia
West Virginia
Wisconsin
Wyoming

The EPA is proposing to require emissions limitations for the following unit types in non-EGU industries: Reciprocating internal combustion engines in Pipeline Transportation of Natural Gas sources; kilns in Cement and Cement Product Manufacturing sources; boilers and furnaces in Iron and Steel Mills and Ferroalloy Manufacturing sources; furnaces in Glass and Glass Product Manufacturing sources; and high-emitting equipment and large boilers in Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills. Refer to Table III.A-1 for a list of North American Industry Classification System (NAICS) codes for each entity included for regulation under this proposed rule.

3. Proposed Error Correction for Previously Approved 2015 Ozone Transport SIP

The EPA proposes to make an error correction under CAA section 110(k)(6) of its May 1, 2020, approval at 85 FR 25307 of the interstate transport elements for Delaware's October 11, 2018, and December 26, 2019, ozone infrastructure SIP submissions as satisfying the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. The EPA proposes to determine that the basis for the prior SIP approval is invalidated by the Agency's more recent technical evaluation of air quality modeling performed in support of the proposed rule,¹⁰ and that Delaware has unresolved interstate transport obligations for the 2015 ozone NAAQS. In this proposed rule, the EPA is also exercising its authority to propose to issue a FIP for Delaware in light of these unresolved interstate transport obligations.

¹⁰ See the Air Quality Modeling Technical Support Document (AQM TSD) in the docket for this proposed rule.

4. Request for Comment on All Aspects of the Proposal

Throughout this proposed rule, unless noted otherwise, the EPA is requesting comments on all aspects of the proposal to enable the Agency to develop a final rule that, consistent with our responsibilities under section 110 of the CAA, eliminates air pollution that significantly contributes to nonattainment or interference with maintenance of the 2015 ozone NAAQS. This proposed rule adheres closely to the legal and analytical framework that the EPA has applied in the past in implementing the good neighbor provision of the CAA, as well as the ample case law reviewing that framework. At the same time, in this proposal, the EPA is applying lessons learned from the performance of regulatory programs established by previous ozone transport rulemakings, as well as updating the Agency's application of the 4-step interstate transport framework with recent information on the nature of ozone transport and emissions reductions opportunities in order to eliminate significant contribution for the more stringent 2015 ozone NAAQS under the good neighbor provision. The EPA invites comments and information to support its efforts to improve the regulation of interstate ozone transport under the good neighbor provision and to fulfill our mission to protect human health and the environment. The EPA will carefully consider information provided in response to this request and will respond to comments submitted through the regulatory docket in the final rule.

B. Summary of the Major Provisions of the Regulatory Action

The EPA is applying the 4-step interstate transport framework developed in CSAPR, the CSAPR Update, the Revised CSAPR Update, and other previous ozone transport rules to propose to further limit NO_x emissions from EGU sources within the borders of 25 states during the ozone season (May 1 through September 30) and to limit ozone season NO_x emissions from non-EGU sources in 23 states to reduce interstate ozone transport under the authority provided in CAA section 110(a)(2)(D)(i)(I). The 4-step interstate transport framework provides a stepwise method for the EPA to propose rule provisions that are required to address the requirements of the good neighbor provision for the 2015 ozone NAAQS: (1) Identifying downwind receptors that are expected to have problems attaining or

maintaining the NAAQS; (2) determining which upwind states contribute to these identified problems in amounts sufficient to “link” them to the downwind air quality problems (*i.e.*, in this proposed rule, a contribution threshold of 1 percent of the NAAQS); (3) for states linked to downwind air quality problems, identifying upwind emissions that significantly contribute to downwind nonattainment or interfere with downwind maintenance of the NAAQS; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind areas, implementing the necessary emissions reductions through enforceable measures. In this proposed rule, the EPA applies the 4-step framework to evaluate upwind states’ obligations to reduce interstate transport of ozone precursor emissions for the 2015 ozone NAAQS. The remainder of this section provides a general overview of the EPA’s application of the 4-step framework as it applies to major provisions of the proposed rule; additional details regarding EPA’s proposed rule approach are found in Section IV of this proposed rule.

In order to apply the first step of the 4-step framework to the 2015 ozone NAAQS, the EPA performed air quality modeling to project ozone concentrations at air quality monitoring sites in 2023, 2026, and 2032.¹¹ The EPA evaluated projected ozone concentrations for the 2023 analytic year at individual monitoring sites and considered current ozone monitoring data at these sites to identify receptors that are anticipated to have problems attaining or maintaining the 2015 ozone NAAQS. This analysis was then repeated using projected ozone concentrations for 2026 and 2032.

To apply the second step of the framework, the EPA used air quality modeling to quantify the contributions from upwind states to ozone concentrations in 2023 and 2026 at downwind receptors.¹² Once quantified, EPA then evaluated these contributions relative to a screening threshold of 1 percent of the NAAQS (*i.e.*, 0.70 ppb).¹³

¹¹ These 3 analytic years are the last full ozone seasons before, and thus align with, upcoming attainment dates for the 2015 ozone NAAQS: August 3, 2024, for areas classified as Moderate nonattainment, August 3, 2027, for areas classified as Serious nonattainment, and August 3, 2033, for areas classified as Severe. See 83 FR 25776.

¹² The EPA did not perform contribution modeling for 2032 since contribution data for this year were not needed to identify upwind states to be analyzed in Step 3.

¹³ See Section V of this proposed rule for explanation of EPA’s use of the 1 percent of the NAAQS threshold in the Step 2 analysis.

States with contributions that equaled or exceeded 1 percent of the NAAQS were identified as warranting further analysis at Step 3 of the four-step framework to determine if the upwind state significantly contributes to nonattainment or interference with maintenance in a downwind state. States with contributions below 1 percent of the NAAQS were considered not to significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states. Based on EPA’s most recent air quality modeling and contribution analysis using 2023 as the analytic year, the EPA proposes to find that the following 27 states have contributions that equal or exceed 1 percent of the 2015 ozone NAAQS, and, thereby, warrant further analysis of significant contribution to nonattainment or interference with maintenance of the NAAQS: Alabama, Arkansas, California, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming. Further evaluation of the locations in California to which Oregon was linked at Step 2 leads the EPA to conclude downwind areas represented by these monitoring sites should not be considered interstate ozone transport receptors. Therefore, the EPA is not proposing any further emissions reductions from the state of Oregon because there is no significant contribution required to be eliminated under the interstate transport provision, as described in Section V.F of this proposed rule.

Based on the air quality analysis presented in Section V of this proposed rule, the EPA proposes to find that in the absence of additional emissions reductions in those states the majority of the states that the EPA is proposing to participate in the Ozone Season Group 3 Trading Program will continue to contribute above the 1 percent of the NAAQS threshold to at least one receptor whose nonattainment and maintenance concerns persist through the 2026 ozone season, with the exception of Alabama, Delaware, and Tennessee. As a result, EPA’s evaluation of emissions reduction potential at Step 3 for Alabama, Delaware, and Tennessee is limited to emission reductions achievable by the 2023 ozone season. For each of these three states, EPA’s analysis does not consider, nor does the EPA propose to require, emissions reductions at either EGUs or non-EGUs

that cannot be implemented until the 2026 ozone season.

At the third step of the 4-step framework, EPA applied a multi-factor test that incorporates cost, availability of emissions reductions, and air quality impacts at the downwind receptors to determine the amount of ozone precursor emissions from the linked upwind states that “significantly” contribute to downwind nonattainment or maintenance receptors. In this proposed rule, the EPA proposes to apply the multifactor test described in Section VI.A of this proposed rule to both EGU and non-EGU sources. The EPA assessed the potential emissions reductions in 2023 and 2026, as well as in intervening and later years to determine the emissions reductions required to eliminate significant contribution in any future year where downwind areas are projected to have potential problems attaining or maintaining the 2015 ozone NAAQS.

For EGU sources, the EPA evaluated the following set of widely-available NO_x emissions control technologies: (1) Fully operating existing selective catalytic reduction (SCR) controls, including both optimizing NO_x removal by existing operational SCRs and turning on and optimizing existing idled SCRs; (2) installing state-of-the-art NO_x combustion controls; (3) fully operating existing selective non-catalytic reduction (SNCR) controls, including both optimizing NO_x removal by existing operational SNCRs and turning on and optimizing existing idled SNCRs; (4) installing new SNCRs; (5) installing new SCRs; and (6) generation shifting. For the reasons explained in Section VI of this proposed rule and supported by the EGU NO_x Mitigation Strategies Proposed Rule Technical Support Document (TSD) included in the docket for this proposed rule, the EPA determined that for the regional, multi-state scale of this rulemaking, only fully operating and optimizing existing SCRs and existing SNCRs (EGU NO_x emissions controls options 1 and 3 in the list earlier) are possible for the 2023 ozone season. The EPA determined that state-of-the-art NO_x combustion controls at EGUs (emissions control option 2 in the list above) are available by the beginning of the 2024 ozone season. Based on EPA’s assessment of the earliest possible timeframe for installation of new SNCR and SCRs (EGU emissions controls options 4 and 5 in the list), the EPA proposes to require emissions reductions commensurate with these controls by the beginning of the 2026 ozone season. See Section VI.B.1 of this proposed rule for a full description of

EPA's analysis of NO_x emissions mitigation strategies for EGU sources.

The EPA proposes control stringency levels that maximize incremental NO_x emissions reduction potential from EGUs and corresponding downwind ozone air quality improvements to the extent feasible in each year analyzed. The EPA believes that the required controls provide cost-effective reductions of NO_x emissions that will provide substantial improvements in downwind ozone air quality to address interstate transport obligations for the 2015 ozone NAAQS in a timely manner. These controls represent greater stringency in upwind EGU controls than in EPA's most recent ozone transport rulemakings, such as the CSAPR Update and the Revised CSAPR Update. However, programs to address interstate ozone transport based on the retrofit of post-combustion controls are by no means unprecedented. In prior ozone transport rulemakings such as the NO_x SIP Call and the Clean Air Interstate Rule (CAIR), the EPA established EGU budgets premised on the widespread availability of retrofitting EGUs with post-combustion emissions controls such as SCR.¹⁴ While these programs successfully drove many EGUs to retrofit post-combustion controls, other EGUs throughout the present geography of linked upwind states continue to operate without such controls and continue to emit at relatively high rates more than 20 years after similar units reduced these emissions under prior interstate ozone transport rulemakings.

Furthermore, the CSAPR Update provided only a partial remedy for eliminating significant contribution for the 2008 ozone NAAQS, as needed to obtain available reductions by the 2017 ozone season. In that rule, the EPA made no determination regarding the appropriateness of more stringent EGU NO_x controls that would be required for a full remedy for interstate transport for the 2008 ozone NAAQS. Following the remand of the CSAPR Update in *Wisconsin v. EPA*, 938 F.3d 303 (D.C. Cir. 2019) (*Wisconsin*), the EPA again declined to require the retrofit of new post-combustion controls on EGUs in the Revised CSAPR Update, but that determination was based on a specific timing consideration: Downwind air quality problems under the 2008 ozone NAAQS were projected to resolve before post-combustion control retrofits could be accomplished on a fleetwide,

regional scale. See 86 FR 23054, 23110 (April 30, 2021).

In this proposed rulemaking, the EPA is addressing good neighbor obligations for the more stringent 2015 ozone NAAQS, and the Agency observes ongoing and persistent contribution from upwind states to ozone nonattainment and maintenance receptors in other states under that NAAQS. As further discussed in Section VI of this proposed rule, the nature of this contribution warrants a greater degree of control stringency than the EPA determined to be necessary to eliminate significant contribution of ozone transport in prior CSAPR rulemakings. The EPA is therefore returning to EGU NO_x control strategies commensurate with those determined to be necessary in the NO_x SIP Call and CAIR.

Based on the Step 3 analysis described in Section VI of this proposed rule, the EPA is proposing that emissions reductions commensurate with the full operation of all existing post-combustion controls (both SCRs and SNCRs) and state-of-the-art combustion control upgrades constitute the Agency's selected control stringency for EGUs within the borders of 25 states linked to downwind nonattainment or maintenance in 2023 (Alabama, Arkansas, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming). For 22 of those states that are also linked in 2026 (Arkansas, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming), the EPA is determining that the selected EGU control stringency also includes emissions reductions commensurate with the retrofit of SCR at coal steam units of 100 MW or greater capacity (excepting circulating fluidized bed units (CFB)), new SNCR on coal steam units of less than 100 MW capacity and CFBs, and SCR on oil/gas steam units greater than 100 MW that have historically emitted at least 150 tons of NO_x per ozone season.

To identify appropriate control strategies for non-EGU sources to achieve NO_x emissions reductions that would result in meaningful air quality improvements in downwind areas, the EPA developed an analytical framework

to evaluate the air quality impacts of potential emissions reductions from non-EGU sources located in the linked upwind states. The EPA incorporated air quality modeling information, annual emissions, and information about potential controls to determine which industries, if subject to further control requirements, would have the greatest impact in providing air quality improvements at the downwind receptors. This evaluation was subject to a marginal cost threshold of up to \$7,500 per ton, which the EPA determined based on information available to the Agency about existing control device efficiency and cost information. Additional information on the analytical framework is described in Section VI.B.2 of this proposed rule and is presented in the memorandum titled *Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EGU Emissions Units for 2026* ("Non-EGU Screening Assessment memorandum"), which is available in the docket for this proposed rulemaking. Based on the results of this assessment, the EPA identified emissions unit types in seven industries (identified in Section I.A.2 of this proposed rule) that provide opportunities for NO_x emissions reductions that result in meaningful impacts on air quality at the downwind receptors.

The EPA performed air quality analysis using the Ozone Air Quality Assessment Tool (AQAT) to determine whether the proposed emissions reductions for both EGUs and non-EGUs potentially create an "over-control" scenario whereby (1) the expected ozone improvements would be greater than necessary to resolve the downwind ozone pollution problem (*i.e.*, beyond what is necessary to resolve all nonattainment and maintenance problems to which an upwind state is linked) or (2) the expected ozone improvements would reduce the upwind state's ozone contributions below the screening threshold (*i.e.*, 1 percent of the NAAQS or 0.70 ppb). The EPA's over-control analysis, discussed in Section VI.D.4 of this proposed rule, shows that the proposed control stringencies for EGU and non-EGU sources do not over-control upwind states' emissions either with respect to the downwind air quality problems to which they are linked or with respect to the 1 percent of the NAAQS contribution threshold, such that over-control would trigger re-evaluation at Step 3 for any linked upwind state.

¹⁴ See, *e.g.*, 70 FR 25162, 25205–06 (May 12, 2005).

Based on the multi-factor test applied to both EGU and non-EGU sources and our subsequent assessment of over-control, the EPA finds that the selected EGU and non-EGU control stringencies constitute the elimination of significant contribution and interference with maintenance, without over-controlling emissions, from the 26 upwind states subject to EGU and non-EGU emissions reductions requirements under the proposed rule. In order to eliminate significant contribution and interference with maintenance through the fourth step of the 4-step framework, as described in Section VII of this proposed rule, the EPA is establishing emissions budgets for EGUs within the borders of 25 states that reflect the remaining allowable emissions after the emissions reductions associated with the selected control stringency have been achieved. For the same reason, the EPA is establishing non-EGU emissions limits in 23 states that result in the elimination of significant contribution from non-EGU sources in these states. For additional details about the test and the over-control analysis, see the document titled, "Ozone Transport Policy Analysis Proposed Rule TSD" included in the docket for this rulemaking.

In this fourth step of the 4-step framework, the EPA proposes to include enforceable measures in the promulgated FIPs to achieve the required emissions reductions in each of the 26 states. Specifically, the FIPs would require covered power plants within the borders of the 25 states listed in Table I.A-1 to participate in the CSAPR NO_x Ozone Season Group 3 Trading Program created by the Revised CSAPR Update. Affected EGUs within the borders of twelve states currently participating in the Group 3 Trading Program would remain in the program, with revised provisions beginning in the 2023 ozone season, under this proposed rule: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. Affected EGUs within the borders of eight states currently covered by the CSAPR NO_x Ozone Season Group 2 Trading Program (the "Group 2 trading program")—Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin—would transition from the Group 2 program to the revised Group 3 trading program beginning with the 2023 control period,¹⁵ and affected EGUs within the borders of five states not currently covered by any CSAPR

trading program for seasonal NO_x emissions—Delaware, Minnesota, Nevada, Utah, and Wyoming—would enter the Group 3 trading program in the 2023 control period following the effective date of the final rule. In addition, the EPA proposes to revise other aspects of the Group 3 trading program to help maintain control stringency over time and improve emissions performance at individual units, offering a necessary measure of assurance that existing pollution controls will be operated during the ozone season, as described in Section VII of this proposed rule. This proposal does not revise the budget stringency and geography of the existing CSAPR NO_x Ozone Season Group 1 trading program. Aside from the eight states moving from the Group 2 trading program to the Group 3 trading program under the proposed rule, this proposal otherwise leaves unchanged the budget stringency of the existing CSAPR NO_x Ozone Season Group 2 trading program.

The EPA is proposing preset ozone season NO_x emissions budgets for the 2023 and 2024 ozone seasons, as explained in Section VII.B of this proposed rule and as shown in Table I.B-1.

TABLE I.B-1—PROPOSED AND ILLUSTRATIVE CSAPR NO_x OZONE SEASON GROUP 3 STATE EMISSIONS BUDGETS FOR 2023 THROUGH 2026 CONTROL PERIODS *

State	Proposed emissions budgets for 2023 control period (tons)	Proposed emissions budgets for 2024 control period (tons)	Illustrative emissions budgets for 2025 control period (tons)	Illustrative emissions budgets for 2026 control period (tons)
Alabama	6,364	6,306	6,306	6,306
Arkansas	8,889	8,889	8,889	3,923
Delaware	384	434	434	434
Illinois	7,364	7,463	7,463	6,115
Indiana	11,151	9,391	8,714	7,791
Kentucky	11,640	11,640	11,134	7,573
Louisiana	9,312	9,312	9,179	3,752
Maryland	1,187	1,187	1,187	1,189
Michigan	10,718	10,718	10,759	6,114
Minnesota	3,921	3,921	3,910	2,536
Mississippi	5,024	4,400	4,400	1,914
Missouri	11,857	11,857	10,456	7,246
Nevada	2,280	2,372	2,372	1,211
New Jersey	799	799	799	799
New York	3,763	3,763	3,763	3,238
Ohio	8,369	8,369	8,369	8,586
Oklahoma	10,265	9,573	9,393	4,275
Pennsylvania	8,855	8,855	8,855	6,819
Tennessee	4,234	4,234	4,008	4,008
Texas	38,284	38,284	36,619	21,946
Utah	14,981	15,146	15,146	2,620
Virginia	3,090	2,814	2,948	2,567
West Virginia	12,478	12,478	12,478	10,597
Wisconsin	5,963	5,057	4,198	3,473

¹⁵ The EPA would deem participation in the Group 3 trading program by the EGUs in these eight states as also addressing the respective states' good neighbor obligations with respect to the 2008 ozone

NAAQS (for all eight states), the 1997 ozone NAAQS (for all the states except Texas), and the 1979 ozone NAAQS (for Alabama, Missouri, and Tennessee) to the same extent that those obligations

are currently being addressed by participation of the states' EGUs in the Group 2 trading program.

TABLE I.B-1—PROPOSED AND ILLUSTRATIVE CSAPR NO_x OZONE SEASON GROUP 3 STATE EMISSIONS BUDGETS FOR 2023 THROUGH 2026 CONTROL PERIODS *—Continued

State	Proposed emissions budgets for 2023 control period (tons)	Proposed emissions budgets for 2024 control period (tons)	Illustrative emissions budgets for 2025 control period (tons)	Illustrative emissions budgets for 2026 control period (tons)
Wyoming	9,125	8,573	8,573	4,490

* Further information on the state-level emissions budget calculations pertaining to Table I.B-1 is provided in Section VII.B.4 of this proposed rule as well as the Ozone Transport Policy Analysis Proposed Rule TSD. Further information on the proposed approach for allocating a portion of Utah's emissions budget for each control period to the existing EGU in the Uintah and Ouray Reservation within Utah's borders is provided in Section VII.B.9 of this proposed rule.

Beyond preset emissions budgets for the 2023 and 2024 control periods, the EPA also proposes to extend the Group 3 trading program budget-setting methodology used in the Revised CSAPR Update so as to routinely set emissions budgets for each future control period (beginning in 2025) in the year before that control period, with each emissions budget reflecting the latest available information on the composition and utilization of the EGU fleet at the time that emissions budget is determined (see Table VII.B.4.c-2 for illustrative examples of dynamic budget calculations that the EPA will publish in advance of each ozone season, effective for the 2025 control period and beyond). The stringency of the dynamic emissions budgets would simply reflect the stringency of the emissions control strategies selected in the rulemaking more consistently over time and ensure that the annual updates would eliminate emissions determined to be unlawful under the good neighbor provision. See Section VII.B of this proposed rule for additional discussion of EPA's proposed method for adjusting emissions budgets to ensure elimination of significant contribution from EGU sources in the linked upwind states.

As an enhancement to the structure of the trading program as originally promulgated in the Revised CSAPR Update, the EPA is also proposing to establish backstop daily emissions rates for coal steam units greater than or equal to 100 MW in covered states. Units emitting in excess of these daily

rates would be subject to increased allowance surrender requirements under the trading program. The backstop daily emissions rates would work in tandem with the ozone season emissions budgets to offer downwind stakeholders a necessary measure of assurance that they will be protected on a daily basis during the ozone season by continuous operation of installed pollution controls. The EPA's experience with the CSAPR trading programs has revealed instances where EGUs have reduced their SCRs' performance on a given day, or across the entire ozone seasons in some cases, including high ozone days.¹⁶ In addition to maintaining a mass-based seasonal requirement, the EPA proposes to require controls while maintaining as much compliance flexibility as possible through a unit-level emission rate designed to ensure that controls operate continuously and that required reductions occur on the highest ozone days. These trading program improvements also promote consistent emissions control performance across the power sector, which protects communities living in downwind ozone nonattainment areas from exceedances of the NAAQS that might otherwise occur.

The EPA proposes to include enforceable emissions standards that

¹⁶ See 86 FR 23090. The EPA highlighted the Miami Fort Unit 7 (possessing a SCR) more than tripled its ozone-season NO_x emission rate between 2017 and 2019.

will apply during the ozone season (annually from May to September) for seven non-EGU industries in the promulgated FIPs to achieve the required emissions reductions in 23 states with remaining interstate transport obligations for the 2015 ozone NAAQS in 2026: Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming. These requirements would apply to all existing emissions units and to any future emissions units constructed in the covered states after promulgation of the final rule. Thus, the emissions limits for non-EGU sources and associated compliance requirements would apply in all 23 states listed in this paragraph, even if certain of these states do not currently have existing emissions units within a particular industry.

Based on our evaluation of the time required to install controls at the types of non-EGU sources covered by this proposed rule, the EPA has identified the 2026 ozone season as the earliest compliance date possible for non-EGU emissions reductions. The EPA is therefore proposing to include non-EGU emissions reductions beginning in 2026. For sources located in the 23 states listed in the previous paragraph, The EPA proposes to require the emissions limits listed in Table I.B-2 for

reciprocating internal combustion engines in Pipeline Transportation of Natural Gas; the emissions limits listed in Table I.B-3 for kilns in Cement and Cement Product Manufacturing; the emissions limits listed in Table I.B-4 for boilers and furnaces in Iron and Steel Mills and Ferroalloy Manufacturing; the emissions limits listed in Table I.B-5 for furnaces in Glass and Glass Product Manufacturing; and the emissions limits listed in Table I.B-6 for high-emitting equipment and large boilers in Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills.

TABLE I.B-2—SUMMARY OF PROPOSED NO_x EMISSIONS LIMITS FOR PIPELINE TRANSPORTATION OF NATURAL GAS

Engine type and fuel	Proposed NO _x emissions limit
Natural Gas Fired Four Stroke Rich Burn.	1.0 g/hp-hr.
Natural Gas Fired Four Stroke Lean Burn.	1.5 g/hp-hr.
Natural Gas Fired Two Stroke Lean Burn.	3.0 g/hp-hr.

TABLE I.B-3—SUMMARY OF PROPOSED NO_x EMISSIONS LIMITS FOR KILN TYPES IN CEMENT AND CONCRETE PRODUCT MANUFACTURING

Kiln type	Proposed NO _x emissions limit (lb/ton of clinker)
Long Wet	4.0
Long Dry	3.0
Preheater	3.8
Precalciner	2.3
Preheater/Precalciner	2.8

The EPA is also proposing a source cap limit expressed in ton per day (tpd) of NO_x for each individual cement plant according to the following equation.¹⁷

$$CAP2015\ Ozone\ Transport = \frac{(KW \times NW) + (KD \times ND)}{(2000 \frac{pounds}{ton} \times 365 \frac{days}{year})}$$

Where:

CAP2015 Ozone Transport = total allowable NO_x emissions from all cement kilns located at one cement plant, in tons per day, on a 30-operating day rolling average basis;

KD = 1.7 pounds NO_x per ton of clinker for dry preheater-precaciner or precaciner kilns;

KW = 3.4 pounds NO_x per ton of clinker for long wet kilns;

ND = the average annual production in tons of clinker plus one standard deviation for the three most recent calendar years from all dry preheater-precaciner or precaciner kilns located at one cement plant; and

NW = the average annual production in tons of clinker plus one standard deviation for the 3 most recent calendar years from all long wet kilns located at one cement plant.

An affected cement plant will need to comply with both the source cap limit and the specific NO_x emissions limits assigned to its individual kiln type(s). Refer to Section VII.C.2 of this proposed rule for additional information concerning the application of the source cap limit to this industry source group.

TABLE I.B-4—SUMMARY OF PROPOSED NO_x EMISSIONS LIMITS FOR IRON AND STEEL AND FERROALLOY EMISSIONS UNITS

Emissions unit	Proposed NO _x emissions standard or requirement (lbs/hour or lb/mmBtu)
Blast Furnace	0.03 lb/mmBtu.
Basic Oxygen Furnace	0.07 lb/ton.
Electric Arc Furnace	0.15 lb/ton steel.
Ladle/tundish Preheaters	0.06 lb/mmBtu.
Reheat furnace	0.05 lb/mmBtu.
Annealing Furnace	0.06 lb/mmBtu.
Vacuum Degasser	0.03 lb/mmBtu.
Ladle Metallurgy Furnace	0.1 lb/ton.
Taconite production kilns	Work practice standard to install low NO _x technology/burners, test and set.
Coke ovens (charging and coking)	0.6 lb/ton of coal charged.
Coke ovens (pushing)	0.015 lb/ton of coal pushed.
Boilers—Coal	0.20 lb/mmBtu.
Boilers—Residual oil	0.20 lb/mmBtu.
Boilers—Distillate oil	0.12 lb/mmBtu.
Boilers—Natural gas	0.08 lb/mmBtu.

¹⁷ Based on source cap equation at 30 TAC § 117.3123(b); January 14, 2009 (74 FR 1927),

Docket ID No. EPA-R06-OAR-2007-1147, also see <https://wayback.archive-it.org/414/>

[20210527223433/https://www.tceq.texas.gov/assets/public/legal/rules/rules/pdflib/117e.pdf](https://www.tceq.texas.gov/assets/public/legal/rules/rules/pdflib/117e.pdf).

TABLE IV.B-5—SUMMARY OF PROPOSED NO_x EMISSIONS LIMITS FOR FURNACE UNIT TYPES IN GLASS AND GLASS PRODUCT MANUFACTURING

Furnace type	Proposed NO _x emissions limit (lb/ton of glass produced)
Container Glass Manufacturing Furnace	4.0
Pressed/Blown Glass Manufacturing Furnace or Fiberglass Manufacturing Furnace	4.0
Flat Glass Manufacturing Furnace	9.2

TABLE I.B-6—SUMMARY OF PROPOSED NO_x EMISSIONS LIMITS FOR HIGH-EMITTING EQUIPMENT AND LARGE BOILERS IN BASIC CHEMICAL MANUFACTURING, PETROLEUM AND COAL PRODUCTS MANUFACTURING, AND PULP, PAPER, AND PAPERBOARD MILLS

Unit type	Emissions limit (lbs NO _x /mmBtu)
Coal	0.20
Residual oil	0.20
Distillate oil	0.12
Natural gas	0.08

Refer to Section VII.C of this proposed rule for applicability criteria, compliance assurance requirements, and the EPA’s rationale in proposing these emissions limits for each of the non-EGU industries covered by the proposed rule. In addition, the EPA requests comment on several topics regarding the implementation of emissions limits for non-EGU sources that are proposed in this rulemaking, including controls on emissions units and control installation timing. See Section VI.D.2.a of this proposed rule for a list of detailed questions on which the Agency is soliciting public comment.

The remainder of this preamble is organized as follows: Section III of this proposed rule outlines general applicability criteria for the proposed rule and describes the EPA’s legal

authority for this proposed rule, the relationship of the proposed rule to previous interstate ozone transport rulemakings, and the incremental costs and benefits of the proposed rule; Section IV of this proposed rule describes the human health and environmental challenges posed by interstate transport contributions to ozone air quality problems, as well as EPA’s overall approach for addressing interstate transport for the 2015 ozone NAAQS in this proposed rule; Section V of this proposed rule describes the Agency’s analyses of air quality data to inform this proposed rulemaking, including descriptions of the air quality modeling platform and emissions inventories used in the proposed rule, as well as EPA’s methods for identifying downwind air quality problems and upwind states’ ozone transport contributions to downwind states; Section VI of this proposed rule describes EPA’s approach to quantifying upwind states’ obligations in the form of EGU NO_x control stringencies and non-EGU emissions limits; Section VII of this proposed rule describes key elements of the implementation schedule for EGU and non-EGU emissions reductions requirements, including details regarding the revised aspects of the CSAPR NO_x Group 3 trading program and compliance deadlines, as well as regulatory requirements and compliance deadlines for non-EGU sources; Section VIII of this proposed rule discusses the environmental justice considerations of

the proposed rule; Section IX of this proposed rule describes the expected costs, benefits, and other impacts of this proposed rule; Section X of this proposed rule provides a summary of proposed changes to the existing regulatory text; and Section XI of this proposed rule discusses the statutory and executive orders affecting this proposed rulemaking.

C. Costs and Benefits

A summary of the key results of the cost-benefit analysis that was prepared for this proposed rule is presented in Table I.C-1. Table I.C-1 presents estimates of the present values (PV) and equivalent annualized values (EAV), calculated using discount rates of 3 and 7 percent as directed by OMB’s Circular A-4, of the health benefits, compliance costs, and net benefits of the proposed rule, in 2016 dollars, discounted to 2022. The estimated monetized net benefits are the estimated monetized benefits minus the estimated monetized costs of the proposed rule. These results present an incomplete overview of the effects of the proposal, because important categories of benefits—including benefits from reducing climate pollution, other types of air pollutants, and water pollution—were not monetized and are therefore not reflected in the cost-benefit tables. We anticipate that taking non-monetized effects into account would show the proposal to be more net beneficial than this table reflects.

TABLE I.C-1—ESTIMATED MONETIZED BENEFITS, COMPLIANCE COSTS, AND NET BENEFITS OF THE PROPOSED RULE, 2023 THROUGH 2042

[Millions 2016\$, discounted to 2022]^a

	3% Discount rate	7% Discount rate
Present Value:		
Benefits ^b	250,000	150,000
Compliance Costs ^c	22,000	14,000
Net Benefits	220,000	130,000
Equivalent Annualized Value:		
Benefits	17,000	14,000
Compliance Costs	1,500	1,300

TABLE I.C–1—ESTIMATED MONETIZED BENEFITS, COMPLIANCE COSTS, AND NET BENEFITS OF THE PROPOSED RULE, 2023 THROUGH 2042—Continued
[Millions 2016\$, discounted to 2022]^a

	3% Discount rate	7% Discount rate
Net Benefits	15,000	12,000

^a Rows may not appear to add correctly due to rounding.

^b The annualized present value of costs and benefits are calculated over a 20-year period from 2023 to 2042. Monetized benefits include those related to public health associated with reductions in PM_{2.5} and ozone concentrations. The health benefits are associated with several point estimates and are presented at real discount rates of 3 and 7 percent. Several categories of benefits remain unmonetized and are thus not reflected in the table. Non-monetized benefits include important climate benefits from reductions in CO₂ emissions. The U.S. District Court for the Western District of Louisiana has issued an injunction concerning the monetization of the benefits of greenhouse gas emission reductions by EPA and other defendants. See *Louisiana v. Biden*, No. 21–cv–01074–JDC–KK (W.D. La. Feb. 11, 2022). Therefore, such values are not presented in the benefit-cost analysis of this proposal conducted pursuant to E.O. 12866. Please see Chapter 5, Section 5.2 of the RIA for more discussion. In addition, there are important unquantified water quality benefits and benefits associated with reductions in other air pollutants.

^c The costs presented in this table are consistent with the costs presented in Chapter 4 of the RIA. To estimate these annualized costs, EPA uses a conventional and widely accepted approach that applies a capital recovery factor (CRF) multiplier to capital investments and adds that to the annual incremental operating expenses. Costs were calculated using a 3.76% real discount rate consistent with the rate used in IPM’s objective function for cost-minimization.

As shown in Table I.C–1, the PV of the benefits, associated with reductions in PM_{2.5} and ozone concentrations, of this proposed rule, discounted at a 3-percent discount rate, is estimated to be about \$250,000 million, with an EAV of about \$17,000 million. At a 7-percent discount rate, the PV of the benefits is estimated to be \$150,000 million, with an EAV of about \$14,000 million. The PV of the compliance costs, discounted at a 3-percent rate, is estimated to be about \$22,000 million, with an EAV of about \$1,500 million. At a 7-percent discount rate, the PV of the compliance costs is estimated to be about \$14,000 million, with an EAV of about \$1,300 million.

II. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2021–0668 at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy,

information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

B. Submitting Confidential Business Information

Do not submit information containing CBI to the EPA through <https://www.regulations.gov>. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* earlier. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI.

Information not marked as CBI will be included in the public docket and the EPA’s electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Our preferred method to receive CBI is for it to be transmitted to electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.*, Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office using the email address, oaqpscbi@epa.gov, and should include clear CBI markings as described above. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email oaqpscbi@epa.gov to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2021–0668. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

C. Participation in Virtual Public Hearing

Please note that because of current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, the EPA cannot hold in-person public meetings at this time.

The EPA will begin pre-registering speakers for the hearing no later than 1 business day after publication of this document in the **Federal Register**. To

register to speak at the virtual hearing, please use the online registration form available at <https://www.epa.gov/csapr/csapr-2015-ozone-naaqs>. The last day to pre-register to speak at the hearing will be April 21, 2022. The EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: <https://www.epa.gov/csapr/csapr-2015-ozone-naaqs>.

The virtual public hearing will be held on via teleconference on April 21, 2022. The virtual public hearing will convene at 10:00 a.m. Eastern Time (ET) and will conclude at 7:00 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. For information or questions about the public hearing, please contact Ms. Holly DeJong at Dejong.holly@epa.gov. The EPA will announce further details at <https://www.epa.gov/csapr/csapr-2015-ozone-naaqs>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to Dejong.holly@epa.gov. The EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/csapr/csapr-2015-ozone-naaqs>. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact Ms. Holly DeJong at Dejong.holly@epa.gov to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing and describe your needs by April 18, 2022. EPA may not be able to arrange accommodations without advanced notice.

III. General Information

A. Does this action apply to me?

This proposed rule affects EGU and non-EGU sources, and regulates the groups identified in Table III.A–1.

TABLE III.A–1—REGULATED GROUPS

Industry group	NAICS
Fossil fuel-fired electric power generation	221112
Pipeline Transportation of Natural Gas	4862
Cement and Concrete Product Manufacturing	3273
Iron and Steel Mills and Ferroalloy Manufacturing	3311
Glass and Glass Product Manufacturing	3272
Basic Chemical Manufacturing	3251
Petroleum and Coal Products Manufacturing	3241
Pulp, Paper, and Paperboard Mills	3221

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed rule. This table lists the types of entities that the EPA is now aware could potentially be regulated by this proposed rule. Other types of entities not listed in the table could also be regulated. For example, the EPA is requesting comment in Section VI.B.3 of this proposed rule on potential control strategies for sources outside of the categories listed in the Table III.A.1, such as municipal waste combustors (MWCs). To determine whether your EGU entity is proposed to be regulated by this proposed rule, you should carefully examine the applicability criteria found in 40 CFR 97.1004, which the EPA is not proposing to alter in this proposed rule. If you have questions regarding the applicability of this proposed rule to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

The EPA evaluated whether interstate ozone transport emissions from upwind states are significantly contributing to nonattainment, or interfering with maintenance, of the 2015 ozone NAAQS in any downwind state using the same 4-step interstate transport framework that was developed in previous ozone transport rulemakings. The EPA is proposing to find that emissions reductions are required from EGU and non-EGU sources in a total of 26 upwind states to eliminate significant contribution to downwind air quality problems for the 2015 ozone standard under the interstate transport provision

of the CAA. The EPA will ensure that these NO_x emissions reductions are achieved by issuing proposed FIP requirements for 26 states: Alabama, Arkansas, California, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

The EPA is proposing to revise the existing CSAPR Group 3 Trading Program to include additional states beginning in the 2023 ozone season. EGUs in five states not currently covered by any CSAPR trading program for seasonal NO_x emissions—Delaware, Minnesota, Nevada, Utah, and Wyoming—would be added to the CSAPR Group 3 Trading Program under this proposed rule. EGUs in twelve states currently participating in the Group 3 Trading Program would remain in the program under this proposed rule: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. EGUs in eight states (Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin) will transition from the CSAPR Group 2 Trading Program to the CSAPR Group 3 Trading Program under this proposed rule beginning in the 2023 ozone season. The EPA proposes to establish control stringency levels reflecting installation of state-of-the-art combustion controls on certain covered EGU sources in emissions budgets beginning in the 2024 ozone season. The EPA proposes to establish control stringency levels reflecting installation of new SCR or SNCR controls on certain covered EGU sources in emissions budgets beginning in the 2026 ozone season.

As a complement to the ozone season emissions budgets, the EPA is also proposing to establish backstop daily emissions rates of 0.14 lb/mmBtu for coal-fired steam units greater than or equal to 100 MW in covered states. The backstop emissions rates will first apply in 2024 for coal-fired steam sources with existing SCRs, and in 2027 for those currently without SCRs.

In this proposed rule, the EPA is proposing to require emissions limitations for non-EGU sources in 23 states: Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, Wisconsin, and

Wyoming. In these states, EPA is proposing to require emissions limitations for the following unit types in non-EGU industries: Furnaces in Glass and Glass Product Manufacturing; boilers and furnaces in Iron and Steel Mills and Ferroalloy Manufacturing; kilns in Cement and Cement Product Manufacturing; reciprocating internal combustion engines in Pipeline Transportation of Natural Gas; and high-emitting equipment and large boilers in Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mill. See Table III.A–1 for a list of NAICS codes for each entity included for regulation under this proposed rule.

The proposed rule would reduce the transport of ozone precursor emissions to downwind areas, which is protective of human health and the environment because acute and chronic exposure to ozone are both associated with negative health impacts. Ozone exposure is also associated with negative effects on ecosystems. Additional information on the human health and environmental benefits from the air quality issues addressed by this proposed rule are included in Section IV of this proposed rule.

C. What is the Agency's legal authority for taking this action?

1. Statutory Authority

The statutory authority for this proposed rule is provided by the CAA as amended (42 U.S.C. 7401 *et seq.*). Specifically, sections 110 and 301 of the CAA provide the primary statutory underpinnings for this proposed rule. The most relevant portions of CAA section 110 are subsections 110(a)(1), 110(a)(2) (including 110(a)(2)(D)(i)(I)), 110(c)(1), and 110(k)(6).

CAA section 110(a)(1) provides that states must make SIP submissions “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” and that these SIP submissions are to provide for the “implementation, maintenance, and enforcement” of such NAAQS.¹⁸ The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA taking any action other than promulgating a new or revised NAAQS.¹⁹

The EPA has historically referred to SIP submissions made for the purpose of satisfying the applicable requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” or “iSIP” submissions. CAA section 110(a)(1) addresses the timing and general requirements for iSIP submissions, and CAA section 110(a)(2) provides more details concerning the required content of these submissions.²⁰ It includes a list of specific elements that “[e]ach such plan” must address.²¹

CAA section 110(c)(1) requires the Administrator to promulgate a FIP at any time within two years after the Administrator: (1) Finds that a state has failed to make a required SIP submission; (2) finds a SIP submission to be incomplete pursuant to CAA section 110(k)(1)(C); or (3) disapproves a SIP submission. This obligation applies unless the state corrects the deficiency through a SIP revision that the Administrator approves before the FIP is promulgated.²²

CAA section 110(a)(2)(D)(i)(I), also known as the “good neighbor” provision, provides the primary basis for this proposed rule.²³ It requires that each state SIP include provisions sufficient to “prohibit[], consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any [NAAQS].”²⁴ The EPA often refers to the emissions reduction requirements under this provision as “good neighbor obligations” and submissions addressing these requirements as “good neighbor SIPs.”

Once EPA promulgates a NAAQS, the EPA must designate areas as being in “attainment” or “nonattainment” of the NAAQS, or “unclassifiable.” CAA section 107(d).²⁵ For ozone, nonattainment is further split into five classifications based on the severity of the violation—Marginal, Moderate, Serious, Severe, or Extreme. Higher classifications provide states with progressively more time to attain while

imposing progressively more stringent control requirements. See CAA sections 181, 182.²⁶ In general, states with nonattainment areas classified as Moderate or higher must submit plans to EPA to bring these areas into attainment according to the statutory schedule. CAA section 182.²⁷ If an area fails to attain the NAAQS by the attainment date associated with its classification, it is “bumped up” to the next classification. CAA section 181(b).²⁸

Section 301(a)(1) of the CAA gives the Administrator the general authority to prescribe such regulations as are necessary to carry out functions under the Act.²⁹ Pursuant to this section, EPA has authority to clarify the applicability of CAA requirements and undertake other rulemaking action as necessary to implement CAA requirements. CAA section 301 affords the Agency any additional authority that may be needed in order to make certain other changes to its regulations under 40 CFR parts 52, 75, 78, and 97, in order to effectuate the purposes of the Act. Such changes are discussed in Section X of this proposed rule.

Section 110(k)(6) of the CAA gives the Administrator authority, without any further submission from a state, to revise certain prior actions, including actions to approve SIPs, upon determining that those actions were in error.³⁰ The EPA proposes to make an error correction under CAA section 110(k)(6) with respect to its prior approval of the 2015 ozone transport SIP submission from the State of Delaware. This is further discussed in Section IV.C.1 of the proposed rule.

Tribes are not required to submit state implementation plans. However, as explained in EPA's regulations outlining Tribal Clean Air Act authority, the EPA is authorized to promulgate FIPs for Indian country as necessary or appropriate to protect air quality if a tribe does not submit, and obtain EPA approval of, an implementation plan. See 40 CFR 49.11(a); see also CAA section 301(d)(4).³¹ In this proposed rule, the EPA proposes an “appropriate or necessary” finding under CAA section 301(d) and proposes tribal FIP(s) as necessary to implement the relevant requirements. This is further discussed in Section IV.C.2 of the proposed rule.

²⁰ 42 U.S.C. 7410(a)(2).

²¹ EPA's general approach to infrastructure SIP submissions is explained in greater detail in individual notices acting or proposing to act on state infrastructure SIP submissions and in guidance. See, e.g., Memorandum from Stephen D. Page on Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) (September 13, 2013).

²² 42 U.S.C. 7410(c)(1).

²³ 42 U.S.C. 7410(a)(2)(D)(i)(I).

²⁴ *Id.*

²⁵ 42 U.S.C. 7407(d).

²⁶ 42 U.S.C. 7511, 7511a.

²⁷ 42 U.S.C. 7511a.

²⁸ 42 U.S.C. 7511(b).

²⁹ 42 U.S.C. 7601(a)(1).

³⁰ 42 U.S.C. 7410(k)(6).

³¹ 42 U.S.C. 7601(d)(4).

¹⁸ 42 U.S.C. 7410(a)(1).

¹⁹ See *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 509–10 (2014).

D. What actions has EPA previously issued to address regional ozone transport?

The EPA has issued several major rules interpreting and clarifying the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the regional transport of ozone. These rules, and the associated court decisions addressing these rules, summarized here, provide important direction regarding the requirements of CAA section 110(a)(2)(D)(i)(I).

The “NO_x SIP Call,” promulgated in 1998, addressed the good neighbor provision for the 1979 1-hour ozone NAAQS.³² The rule required 22 states and the District of Columbia to amend their SIPs to reduce NO_x emissions that contribute to ozone nonattainment in downwind states. The EPA set ozone season NO_x budgets for each state, and the states were given the option to participate in a regional allowance trading program, known as the NO_x Budget Trading Program.³³ The D.C. Circuit largely upheld the NO_x SIP Call in *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000), *cert. denied*, 532 U.S. 904 (2001).

EPA’s next rule addressing the good neighbor provision, the Clean Air Interstate Rule (CAIR), was promulgated in 2005 and addressed both the 1997 fine particulate matter (PM_{2.5}) NAAQS and 1997 ozone NAAQS.³⁴ CAIR required SIP revisions in 28 states and the District of Columbia to reduce emissions of sulfur dioxide (SO₂) or NO_x—important precursors of regionally transported PM_{2.5} (SO₂ and annual NO_x) and ozone (summer-time NO_x). As in the NO_x SIP Call, states were given the option to participate in regional trading programs to achieve the reductions. When the EPA promulgated the final CAIR in 2005, the EPA also issued findings that states nationwide had failed to submit SIPs to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 1997

PM_{2.5} and 1997 ozone NAAQS.³⁵ On March 15, 2006, the EPA promulgated FIPs to implement the emissions reductions required by CAIR.³⁶ CAIR was remanded to EPA by the D.C. Circuit in *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), *modified on reh’g*, 550 F.3d 1176. For more information on the legal issues underlying CAIR and the D.C. Circuit’s holding in *North Carolina*, refer to the preamble of the CSAPR rule.³⁷

In 2011, the EPA promulgated CSAPR to address the issues raised by the remand of CAIR. CSAPR addressed the two NAAQS at issue in CAIR and additionally addressed the good neighbor provision for the 2006 PM_{2.5} NAAQS.³⁸ CSAPR required 28 states to reduce SO₂ emissions, annual NO_x emissions, or ozone season NO_x emissions that significantly contribute to other states’ nonattainment or interfere with other states’ abilities to maintain these air quality standards.³⁹ To align implementation with the applicable attainment deadlines, the EPA promulgated FIPs for each of the 28 states covered by CSAPR. The FIPs require EGUs in the covered states to participate in regional trading programs to achieve the necessary emissions reductions. Each state can submit a good neighbor SIP at any time that, if approved by EPA, would replace the CSAPR FIP for that state.

CSAPR was the subject of an adverse decision by the D.C. Circuit in August 2012.⁴⁰ However, this decision was reversed in April 2014 by the Supreme Court, which largely upheld the rule, including EPA’s approach to addressing interstate transport in CSAPR. *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489 (2014) (*EME Homer City I*). The rule was remanded to the D.C. Circuit to consider claims not addressed by the Supreme Court. *Id.* In July 2015 the D.C. Circuit generally affirmed EPA’s

interpretation of various statutory provisions and EPA’s technical decisions. *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (2015) (*EME Homer City II*). However, the court remanded the rule without vacatur for reconsideration of EPA’s emissions budgets for certain states, which the court found may have over-controlled those states’ emissions with respect to the downwind air quality problems to which the states were linked. *Id.* at 129–30, 138. For more information on the legal issues associated with CSAPR and the Supreme Court’s and D.C. Circuit’s decisions in the *EME Homer City* litigation, refer to the preamble of the CSAPR Update.⁴¹

In 2016, the EPA promulgated the CSAPR Update to address interstate transport of ozone pollution with respect to the 2008 ozone NAAQS.⁴² The final rule updated the CSAPR ozone season NO_x emissions budgets for 22 states to achieve cost-effective and immediately feasible NO_x emissions reductions from EGUs within those states.⁴³ The EPA aligned the analysis and implementation of the CSAPR Update with the 2017 ozone season in order to assist downwind states with timely attainment of the 2008 ozone NAAQS.⁴⁴ The CSAPR Update implemented the budgets through FIPs requiring sources to participate in a revised CSAPR NO_x ozone season trading program beginning with the 2017 ozone season. As under CSAPR, each state could submit a good neighbor SIP at any time that, if approved by the EPA, would replace the CSAPR Update FIP for that state. The final CSAPR Update also addressed the remand by the D.C. Circuit of certain states’ CSAPR phase 2 ozone season NO_x emissions budgets in *EME Homer City II*.

In December 2018, the EPA promulgated the CSAPR “Close-Out,” which determined that no further enforceable reductions in emissions of NO_x were required with respect to the

³⁵ 70 FR 21147 (April 25, 2005).

³⁶ 71 FR 25328 (April 28, 2006).

³⁷ *Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals*, 76 FR 48208, 48217 (August 8, 2011).

³⁸ 76 FR 48208.

³⁹ CSAPR was revised by several rulemakings after its initial promulgation in order to revise certain states’ budgets and to promulgate FIPs for five additional states addressing the good neighbor obligation for the 1997 ozone NAAQS. *See* 76 FR 80760 (December 27, 2011); 77 FR 10324 (February 21, 2012); 77 FR 34830 (June 12, 2012).

⁴⁰ On August 21, 2012, the D.C. Circuit issued a decision in *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), vacating CSAPR. The EPA sought review with the D.C. Circuit *en banc* and the D.C. Circuit declined to consider EPA’s appeal *en banc*. *EME Homer City Generation, L.P. v. EPA*, No. 11–1302 (D.C. Cir. January 24, 2013), ECF No. 1417012 (denying EPA’s motion for rehearing *en banc*).

⁴¹ *Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS*, 81 FR 74504, 74511 (October 26, 2016).

⁴² 81 FR 74504.

⁴³ One state, Kansas, was made newly subject to ozone season NO_x requirements by the CSAPR Update. All other CSAPR Update states were already subject to ozone season NO_x requirements under CSAPR.

⁴⁴ 81 FR 74516. EPA’s final 2008 Ozone NAAQS SIP Requirements Rule, 80 FR 12264, 12268 (March 6, 2015), revised the attainment deadline for ozone nonattainment areas designated as Moderate to July 20, 2018. *See* 40 CFR 51.1103. In order to demonstrate attainment by this deadline, states were required to rely on design values calculated using ozone season data from 2015 through 2017, since the July 20, 2018, deadline did not afford enough time for measured data of the full 2018 ozone season.

³² *Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone*, 63 FR 57356 (Oct. 27, 1998). As originally promulgated, the NO_x SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed and later rescinded the rule’s provisions with respect to that standard. *See* 84 FR 8422 (March 8, 2019).

³³ “Allowance Trading,” sometimes referred to as “cap and trade,” is an approach to reducing pollution that has been used successfully to protect human health and the environment. The design elements of EPA’s most recent trading programs are discussed in Section VII.B.1.a of this proposed rule.

³⁴ *Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call*, 70 FR 25162 (May 12, 2005).

2008 ozone NAAQS for 20 of the 22 eastern states covered by the CSAPR Update, and reflected that determination in revisions to the existing state-specific sections of the CSAPR Update regulations for those states.⁴⁵

The CSAPR Update and the CSAPR Close-Out were both subject to legal challenges in the D.C. Circuit. *Wisconsin v. EPA*, 938 F.3d 303 (D.C. Cir. 2019) (*Wisconsin*); *New York v. EPA*, 781 Fed. App'x 4 (D.C. Cir. 2019) (*New York*). In September 2019, the D.C. Circuit upheld the CSAPR Update in virtually all respects but remanded the rule because it was partial in nature and did not fully eliminate upwind states' significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS by "the relevant downwind attainment deadlines" in the CAA. *Wisconsin*, 938 F.3d at 313–15. In October 2019, the D.C. Circuit vacated the CSAPR Close-Out on the same grounds that it remanded the CSAPR Update in *Wisconsin*, specifically that the Close-Out rule did not address good neighbor obligations by "the next applicable attainment date" of downwind states. *New York*, 781 Fed. App'x at 7.⁴⁶

In response to the *Wisconsin* remand of the CSAPR Update and the *New York* vacatur of the CSAPR Close-Out, the EPA promulgated the Revised CSAPR Update on April 30, 2021.⁴⁷ The Revised CSAPR Update found that the CSAPR Update was a full remedy for nine of the covered states. For the 12 remaining states, the EPA found that their projected 2021 ozone season NO_x emissions significantly contribute to downwind states' nonattainment or maintenance problems. The EPA issued new or amended FIPs for these 12 states and required implementation of revised

emissions budgets for EGUs beginning with the 2021 ozone season. Based on EPA's assessment of remaining air quality issues and additional emissions control strategies for EGUs and emissions sources in other industry sectors (non-EGUs), the EPA determined that the NO_x emissions reductions achieved by the Revised CSAPR Update fully eliminated these states' significant contributions to downwind air quality problems for the 2008 ozone NAAQS. As under the CSAPR and the CSAPR Update, each state can submit a good neighbor SIP at any time that, if approved by EPA, would replace the Revised CSAPR Update FIP for that state.⁴⁸

IV. Air Quality Issues Addressed and Overall Approach for the Proposed Rule

A. The Interstate Ozone Transport Air Quality Challenge

1. Nature of Ozone and the Ozone NAAQS

Ground-level ozone is not emitted directly into the air but is created by chemical reactions between NO_x and volatile organic compounds (VOCs) in the presence of sunlight. Emissions from electric utilities and industrial facilities, motor vehicles, gasoline vapors, and chemical solvents are some of the major sources of NO_x and VOCs.

Because ground-level ozone formation increases with temperature and sunlight, ozone levels are generally higher during the summer months. Increased temperature also increases emissions of volatile man-made and biogenic organics and can also indirectly increase NO_x emissions (*e.g.*, increased electricity generation for air conditioning).

On October 1, 2015, the EPA strengthened the primary and secondary ozone standards to 70 ppb as an 8-hour level.⁴⁹ Specifically, the standards require that the 3-year average of the fourth highest 24-hour maximum 8-hour average ozone concentration may not exceed 70 ppb as a truncated value (*i.e.*, digits to right of decimal removed).⁵⁰ In general, areas that exceed the ozone standard are designated as nonattainment areas, pursuant to the designations process under CAA section 107, and are subject to heightened planning requirements depending on the degree of severity of their

nonattainment classification, *see* CAA sections 181, 182.

In the process of setting the 2015 ozone NAAQS, the EPA noted that the conditions conducive to the formation of ozone (*i.e.*, seasonally-dependent factors such as ambient temperature, strength of solar insolation, and length of day) differ by location, and that the Agency believes it is important that ozone monitors operate during all periods when there is a reasonable possibility of ambient levels approaching the level of the NAAQS. At that time, the EPA stated that ambient ozone concentrations in many areas could approach or exceed the level of the NAAQS, more frequently and during more months of the year compared with the historical ozone season monitoring lengths. Consequently, the EPA extended the ozone monitoring season for many locations. *See* 80 FR 65416 for more details.

Furthermore, the EPA stated that in addition to being affected by changing emissions, future ozone concentrations may also be affected by climate change. Modeling studies in the EPA's Interim Assessment (U.S. EPA, 2009a) that are cited in support of the 2009 Endangerment Finding under CAA section 202(a) (74 FR 66496, Dec. 15, 2009) as well as a recent assessment of potential climate change impacts (Fann et al., 2015) project that climate change may lead to future increases in summer ozone concentrations across the contiguous U.S.⁵¹ (80 FR 65300). The increase in ozone results from changes in local weather conditions, including temperature and atmospheric circulation patterns, as well as changes in ozone precursor emissions that are influenced by meteorology (Nolte et al., 2018). While the projected impact may not be uniform, climate change has the potential to increase average summertime ozone relative to a future without climate change.^{52 53 54} Climate

⁴⁵ *Determination Regarding Good Neighbor Obligations for the 2008 Ozone National Ambient Air Quality Standard*, 83 FR 65878, 65882 (Dec. 21, 2018). After promulgating the CSAPR Update and before promulgating the CSAPR Close-Out, the EPA approved a SIP from Kentucky resolving the Commonwealth's good neighbor obligations for the 2008 ozone NAAQS. 83 FR 33730 (July 17, 2018). In the Revised CSAPR Update, the EPA made an error correction under CAA section 110(k)(6) to convert this approval to a disapproval, because the Kentucky approval relied on the same analysis which the D.C. Circuit determined to be unlawful in the CSAPR Close-Out.

⁴⁶ Subsequently, the D.C. Circuit made clear in a decision reviewing EPA's denial of a petition under CAA section 126 that the holding in *Wisconsin* regarding alignment with downwind area's attainment schedules applies with equal force to the Marginal area attainment date established under CAA section 181(a). *See Maryland v. EPA*, 958 F.3d 1185, 1203–04 (D.C. Cir. 2020).

⁴⁷ *Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS*, 86 FR 23054 (April 30, 2021).

⁴⁸ The Revised CSAPR Update is currently subject to a petition for judicial review pending in the D.C. Circuit Court of Appeals, *Midwest Ozone Group v. EPA*, No. 21–1146 (D.C. Cir. June 25, 2021).

⁴⁹ 80 FR 65291.

⁵⁰ 40 CFR part 50, Appendix P to part 50

⁵¹ These modeling studies are based on coupled global climate and regional air quality models and are designed to assess the sensitivity of U.S. air quality to climate change. A wide range of future climate scenarios and future years have been modeled and there can be variations in the expected response in U.S. O₃ by scenario and across models and years, within the overall signal of higher summer O₃ concentrations in a warmer climate.

⁵² Fann NL, Nolte CG, Sarofim MC, Martinich J, Nassikas NJ. Associations Between Simulated Future Changes in Climate, Air Quality, and Human Health. *JAMA Netw Open*. 2021;4(1):e2032064. doi: 10.1001/jamanetworkopen.2020.32064.

⁵³ Christopher G Nolte, Tanya L Spero, Jared H Bowden, Marcus C Sarofim, Jeremy Martinich, Megan S Mallard. Regional temperature-ozone relationships across the U.S. under multiple climate and emissions scenarios. *J Air Waste Manag Assoc*. 2021 Oct;71(10):1251–1264. doi: 10.1080/10962247.2021.1970048.

change has the potential to offset some of the improvements in ozone air quality, and therefore some of the improvements in public health, that are expected from reductions in emissions of ozone precursors (80 FR 65300).

2. Ozone Transport

Studies have established that ozone formation, atmospheric residence, and transport occur on a regional scale (*i.e.*, thousands of kilometers) over much of the U.S.⁵⁵ While substantial progress has been made in reducing ozone in many areas, the interstate transport of ozone precursor emissions remains an important contributor to peak ozone concentrations and high-ozone days during the summer ozone season.

The EPA has previously concluded in the NO_x SIP Call, CAIR, CSAPR, the CSAPR Update, and the Revised CSAPR Update that a regional NO_x control strategy would be effective in reducing regional-scale transport of ozone precursor emissions. NO_x emissions can be transported downwind as NO_x or as ozone after transformation in the atmosphere. In any given location, ozone pollution levels are impacted by a combination of background ozone concentration, local emissions, and emissions from upwind sources resulting from ozone transport. Downwind states' ability to meet health-based air quality standards such as the NAAQS is challenged by the transport of ozone pollution across state borders. For example, ozone assessments conducted for the October 2015 Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone continue to show the importance of NO_x emissions for ozone transport. This analysis is included in the docket for this proposal.

Further, studies have found that EGU NO_x emissions reductions can be effective in reducing individual 8-hour peak ozone concentrations and in reducing 8-hour peak ozone concentrations averaged across the ozone season. For example, a study that evaluates the effectiveness on ozone concentrations of EGU NO_x reductions

achieved under the NO_x Budget Trading Program (*i.e.*, the NO_x SIP Call) shows that regulating NO_x emissions in that program was highly effective in reducing ozone concentrations during the ozone season.⁵⁶

Previous regional ozone transport efforts, including the NO_x SIP Call, CAIR, CSAPR, the CSAPR Update, and the Revised CSAPR Update, required ozone season NO_x reductions from EGU sources to address interstate transport of ozone. Together with NO_x, EPA has also identified VOCs as a precursor in forming ground-level ozone. Ozone formation chemistry can be "NO_x-limited," where ozone production is primarily determined by the amount of NO_x emissions or "VOC-limited," where ozone production is primarily determined by the amount of VOC emissions.⁵⁷ The EPA and others have long regarded NO_x to be the more significant ozone precursor in the context of interstate ozone transport.⁵⁸

The EPA has determined that the regulation of VOCs as an ozone precursor is not necessary to eliminate significant contribution of ozone transport to downwind areas in this proposed rule. As described in Section VI.A of this proposed rule, the EPA examined the results of the contribution modeling performed for this rule to identify the portion of the ozone contribution attributable to anthropogenic NO_x emissions versus VOC emissions from each linked upwind state to each downwind receptor. Our analysis of the ozone contribution from upwind states subject to regulation under this proposed rule demonstrates that the vast majority of the downwind air quality areas are NO_x-limited, rather than VOC-limited. Therefore, the proposed rule's strategy for reducing regional-scale transport of ozone targets NO_x emissions from stationary sources to achieve the most effective reductions of ozone transport over the geography of the affected downwind areas.

Commenters on prior ozone transport rules have asserted that VOC emissions harm underserved and overburdened communities experiencing disproportionate environmental health burdens and facing other environmental injustices. The EPA acknowledges that VOCs can contain toxic chemicals that are detrimental to public health. The

EPA conducted a demographic analysis as part of the regulatory impact analysis for the 2015 revisions to the primary and secondary ozone NAAQS. This analysis, which is included in the docket for this proposed rulemaking, found greater representation of minority populations in areas with poor air quality relative to the revised ozone standard than in the U.S. as a whole. The EPA concluded that populations in these areas would be expected to benefit from implementation of future air pollution control actions from state and local air agencies in implementing the strengthened standard. This proposed rule is an example of air pollution control actions implemented by the federal government in support of the more stringent 2015 ozone NAAQS, and populations living in downwind ozone nonattainment areas are expected to benefit from improved air quality that will result from reducing ozone transport. Further discussion of the environmental justice impacts of this proposed rule is located in Section VIII of this proposed rule and in the accompanying regulatory impact analysis, titled "Regulatory Impact Analysis for the Proposed Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard" [EPA-452/D-22-001], which is available in the docket for this rulemaking.

The Agency regulates exposure to toxic pollutant concentrations and ambient exposure to criteria pollutants other than ozone through other sections of the Act, such as the regulation of hazardous air pollutants under CAA section 112 or the process for revising and implementing the NAAQS under CAA sections 107–110. The purpose of the proposed rulemaking is to protect public health and the environment by eliminating significant contribution from 26 states to nonattainment or maintenance of the 2015 ozone NAAQS in order to meet the requirements of the CAA's interstate transport provision. In this proposed rule, the EPA continues to observe that requiring NO_x emissions reductions from stationary sources is an effective strategy for reducing regional ozone transport in the U.S.

In Section VI of this proposed rule, EPA describes the multi-factor test that is used to determine NO_x emissions reductions that are cost-effective and reduce interstate transport of ground-level ozone. Our analysis indicates that the EGU and non-EGU control requirements proposed in this rule will provide meaningful improvements in air quality at the downwind receptors. Based on the implementation schedule

⁵⁴ Nolte, C.G., P.D. Dolwick, N. Fann, L.W. Horowitz, V. Naik, R.W. Pinder, T.L. Spero, D.A. Winner, and L.H. Ziska, 2018: Air Quality. In Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, pp. 512–538. doi: 10.7930/NCA4.2018.CH13.

⁵⁵ Bergin, M.S. et al. (2007) Regional air quality: Local and interstate impacts of NO_x and SO₂ emissions on ozone and fine particulate matter in the eastern United States. *Environmental Sci & Tech.* 41: 4677–4689.

⁵⁶ Butler, et al., "Response of Ozone and Nitrate to Stationary Source Reductions in the Eastern USA". *Atmospheric Environment*, 2011.

⁵⁷ "Ozone Air Pollution." *Introduction to Atmospheric Chemistry*, by DANIEL J. JACOB, Princeton University Press, PRINCETON, NEW JERSEY, 1999, pp. 231–244.

⁵⁸ 81 FR 74514.

established in Section VII.A of this proposed rule, the EPA proposes to determine that the regulatory requirements included in the proposed rule are as expeditious as practicable and are aligned with the attainment schedule of downwind areas.

3. Health and Environmental Effects

Exposure to ambient ozone causes a variety of negative effects on human health, vegetation, and ecosystems. In humans, acute and chronic exposure to ozone is associated with premature mortality and a number of morbidity effects, such as asthma exacerbation. In ecosystems, ozone exposure causes visible foliar injury, decreases plant growth, and affects ecosystem community composition. See EPA's October 2015 Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone⁵⁹ in the docket for this proposal for more information on the human health and ecosystem effects associated with ambient ozone exposure.

B. Proposed Rule Approach

1. The 4-Step Interstate Transport Framework

The EPA first developed a multi-step process to address the requirements of the good neighbor provision in the NO_x SIP Call and CAIR. The Agency built upon this framework and further refined the methodology for addressing interstate transport obligations in subsequent rules such as CSAPR, the CSAPR Update, and the Revised CSAPR Update.⁶⁰ In CSAPR, the EPA first articulated a "4-step framework" within which to assess interstate transport obligations for ozone. In this proposed action to address interstate transport obligations for the 2015 ozone NAAQS, the EPA is again utilizing the 4-step interstate transport framework. These steps are: (1) Identifying downwind receptors that are expected to have problems attaining the NAAQS (nonattainment receptors) or maintaining the NAAQS (maintenance receptors); (2) determining which upwind states are "linked" to these identified downwind receptors based on a numerical contribution threshold; (3) for states linked to downwind air quality problems, identifying upwind emissions on a statewide basis that significantly contribute to downwind nonattainment or interfere with

downwind maintenance of the NAAQS, considering cost- and air quality-based factors; and (4) for upwind states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any downwind state, implementing the necessary emissions reductions through enforceable measures.

a. Step 1 Approach

The EPA proposes to continue to apply the method of the CSAPR Update and the Revised CSAPR Update for identifying nonattainment and maintenance receptors. In the Revised CSAPR Update, the EPA assessed downwind air quality problems using modeled future air quality concentrations for an analytic year aligned with the relevant attainment deadline for the NAAQS under consideration in that rulemaking.⁶¹ Similarly, in CSAPR, downwind air quality problems were assessed using modeled future air quality concentrations for a year aligned with attainment deadlines for the NAAQS considered in that rulemaking. The base case scenario provides an assessment of future air quality conditions that generally accounts for enforceable "on-the-books" emissions reductions and provides the most up-to-date forecast of what future emissions would resemble, in the absence of the transport policy in the proposed rule under evaluation. Downwind air quality problems are identified as the locations of monitoring sites that are projected to be unable to attain the NAAQS ("nonattainment receptors") or as the locations of monitoring sites that are projected to be unable to maintain the NAAQS ("maintenance receptors"). In the CSAPR Update and the Revised CSAPR Update, unlike CSAPR,⁶² the EPA also considered currently available monitored air quality data to further inform the identification of projected downwind air quality problems. These same considerations are included for this proposal. Further details regarding the application of Step 1 of the 4-step interstate transport framework in this

proposal are described in Section V.D of this proposed rule.

b. Step 2 Approach

The EPA proposes to apply the same approach for identifying which states are contributing to downwind nonattainment and maintenance receptors as it has applied in the three prior CSAPR rulemakings. CSAPR, the CSAPR Update, and the Revised CSAPR Update used a screening threshold of 1 percent of the NAAQS to identify upwind states that were "linked" to downwind air pollution problems. States with contributions greater than or equal to the threshold for at least one downwind nonattainment or maintenance receptor identified in Step 1 were identified as needing further evaluation of their good neighbor obligations to downwind states.⁶³ The EPA evaluated each state's contribution based on the average relative downwind impact calculated over multiple days.⁶⁴ States whose air quality impacts to all downwind receptors were below this threshold did not require further evaluation for actions to address transport. In other words, the EPA determined that these states did not contribute to downwind air quality problems and therefore had no emissions reduction obligations under the good neighbor provision. The EPA applies a contribution screening threshold because many downwind ozone nonattainment areas receive transport contributions from a number of upwind states. While the proportion of contribution from a single upwind state may be relatively small, the effect of collective contribution resulting from multiple upwind states may substantially contribute to nonattainment of or interference with maintenance of the NAAQS in downwind areas. The preambles to the

⁵⁹ For ozone, the impacts include those from VOC and NO_x from all sectors.

⁶⁰ The number of days used in calculating the average contribution metric has historically been determined in a manner that is generally consistent with EPA's recommendations for projecting future year ozone design values. Our ozone attainment demonstration modeling guidance at the time of CSAPR recommended using all model-predicted days above the NAAQS to calculate future year design values (<https://www3.epa.gov/ttn/scram/guidance/guide/final-03-pm-rh-guidance.pdf>). In 2014, the EPA issued draft revised guidance that changed the recommended number of days to the top-10 model predicted days (https://www3.epa.gov/ttn/scram/guidance/guide/Draft-O3-PM-RH-Modeling_Guidance-2014.pdf). For the CSAPR Update, the EPA transitioned to calculating design values based on this draft revised approach. The revised modeling guidance was finalized in 2019 and, in this regard, EPA is calculating both the ozone design values and the contributions based on a top-10 day approach (https://www3.epa.gov/ttn/scram/guidance/guide/O3-PM-RH-Modeling_Guidance-2018.pdf).

⁵⁹ Available at <https://www.epa.gov/sites/default/files/2016-02/documents/20151001ria.pdf>.

⁶⁰ See CSAPR, Final Rule, 76 FR 48208, 48248–48249 (August 8, 2011); CSAPR Update, Final Rule, 81 FR 74504, 74517–74521 (October 26, 2016).

⁶¹ Specifically, the EPA analyzed 2021 to align with the attainment date for areas classified as Severe nonattainment for the 2008 ozone NAAQS, and because the last full ozone season before that date, in 2020, was already in the past.

⁶² In CSAPR, the EPA did not use current monitored air quality conditions, because that data was influenced by the invalidated CAIR rule, which the EPA was replacing with CSAPR. See 81 FR 74506, 74531. As the EPA is not replacing an existing transport program in this proposed rule, the Agency proposes to once again consider current monitored data as part of the process for identifying projected receptors for this rulemaking.

proposed and final CSAPR rules discuss the use of the 1 percent threshold for CSAPR. *See* 75 FR 45237 (August 2, 2010); 76 FR 48238 (August 8, 2011). The same metric is discussed in the CSAPR Update, *see* 81 FR 74538, and in the Revised CSAPR Update, *see* 86 FR 23054. In this proposed rule, the EPA updated the air quality modeling data used for determining contributions at Step 2 of the four-step interstate transport framework. The EPA otherwise continues to find that this threshold is appropriate to continue to apply for the 2015 ozone NAAQS. This proposal's application of the Step 2 approach is comprehensively described in Section V of this proposed rule.

c. Step 3 Approach

The EPA proposes to continue to apply the same approach as the prior three CSAPR rulemakings for evaluating "significant contribution" at Step 3.⁶⁵ For states that are linked in Step 3 to downwind air quality problems, CSAPR, the CSAPR Update, and the Revised CSAPR Update evaluated NO_x reduction potential, cost, and downwind air quality improvements available at various mitigation technology breakpoints (represented by cost thresholds) in the multi-factor test. In CSAPR, the CSAPR Update, and the Revised CSAPR Update, the EPA selected the technology breakpoint (represented by a cost threshold) that, in general, maximized cost-effectiveness—*i.e.*, that achieved a reasonable balance of incremental NO_x reduction potential and corresponding downwind ozone air quality improvements, relative to the other emissions budget levels evaluated. *See, e.g.*, 81 FR 74550. The EPA determined the level of emissions reductions associated with that level of control stringency to constitute significant contribution to nonattainment or interfere with maintenance of a NAAQS downwind. *See, e.g.*, 86 FR 23116. This approach

⁶⁵ For simplicity, the EPA (and courts) at times will refer to the Step 3 analysis as determining "significant contribution"; however, EPA's approach at Step 3 also implements the "interference with maintenance" prong of the good neighbor provision, by also addressing emissions that impact the maintenance receptors identified at Step 1. *See* 86 FR 23074 ("In effect, EPA's determination of what level of upwind contribution constitutes 'interference' with a maintenance receptor is the same determination as what constitutes 'significant contribution' for a nonattainment receptor. Nonetheless, this continues to give independent effect to prong 2 because the EPA applies a broader definition for identifying maintenance receptors, which accounts for the possibility of problems maintaining the NAAQS under realistic potential future conditions.").

was upheld by the U.S. Supreme Court in *EPA v. EME Homer City*.⁶⁶

The EPA proposes in this action to apply this approach to identify EGU and non-EGU NO_x control stringencies necessary to address significant contribution for the 2015 ozone NAAQS. The EPA applies a multifactor assessment using cost-thresholds, total emissions reduction potential, and downwind air quality effects as key factors in determining a reasonable balance of NO_x controls in light of the downwind air quality problems. EPA's evaluation of available NO_x mitigation strategies for EGUs focuses on the same core set of measures as prior transport rules, and the EPA proposes a control stringency for EGUs from these measures that is commensurate with the nature of the ongoing ozone nonattainment and maintenance problems observed for the 2015 ozone NAAQS. Similarly, in this action, the EPA includes other industrial sources (non-EGUs) in its Step 3 analysis and proposes emissions limitations for certain non-EGU sources as needed to eliminate significant contribution and interference with maintenance. The available reductions and cost-levels for the non-EGU stringency is generally commensurate with the control strategy for EGUs.

In CSAPR, the CSAPR Update, and the Revised CSAPR Update, EPA focused its Step 3 analysis on EGUs. In the Revised CSAPR Update, in response to the *Wisconsin* decision's finding that the EPA had not adequately evaluated potential non-EGU reductions, *see* 938 F.3d at 318, the EPA determined that the available NO_x emissions reductions from non-EGU sources, for purposes of addressing good neighbor obligations for the 2008 ozone NAAQS, at a comparable cost threshold to the required EGU emissions reductions (for which EPA used an adjusted representative cost of \$1,800 per ton), and based on the timing of when such measures could be implemented, did not provide a sufficiently meaningful and timely air quality improvement at the downwind receptors before those receptors were projected to resolve. *See* 86 FR 23110. On that basis, the EPA made a finding that emissions reductions from non-EGU sources were not required to eliminate significant contribution to downwind air quality problems under the interstate transport provision for the 2008 ozone NAAQS. In this proposal, EPA's "significant contribution" analysis at Step 3 of the 4-step framework includes a

⁶⁶ *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489 (2014).

comprehensive evaluation of major stationary source non-EGU industries in the linked upwind states. The EPA is proposing to find that emissions from certain non-EGU sources in the upwind states significantly contribute to downwind air quality problems for the 2015 ozone NAAQS, and that cost-effective emissions reductions from these sources are required to eliminate significant contribution under the interstate transport provision. Therefore, this proposed rule includes required emissions reductions from non-EGU sources in upwind states to fulfill interstate transport obligations for the 2015 ozone NAAQS. This analysis is described fully in Section VI of the proposed rule.

In this proposed rule, the EPA also continues to apply its approach for assessing and avoiding "over-control." In *EME Homer City*, the Supreme Court held that "EPA cannot require a State to reduce its output of pollution by more than is necessary to achieve attainment in every downwind State or at odds with the one-percent threshold the Agency has set." 572 U.S. at 521. The Court acknowledged that "instances of 'over-control' in particular downwind locations may be incidental to reductions necessary to ensure attainment elsewhere." *Id.* at 492.

"Because individual upwind States often 'contribute significantly' to nonattainment in multiple downwind locations, the emissions reductions required to bring one linked downwind State into attainment may well be large enough to push other linked downwind States over the attainment line. As the Good Neighbor Provision seeks attainment in every downwind State, however, exceeding attainment in one State cannot rank as 'over-control' unless unnecessary to achieving attainment in any downwind State. Only reductions unnecessary to downwind attainment *anywhere* fall outside the Agency's statutory authority."

Id. at 522 (footnotes excluded).

The Court further explained that "while EPA has a statutory duty to avoid over-control, the Agency also has a statutory obligation to avoid 'under-control,' *i.e.*, to maximize achievement of attainment downwind." *Id.* at 523. Therefore, in the CSAPR Update and Revised CSAPR Update, the EPA evaluated possible over-control by considering whether an upwind state is linked solely to downwind air quality problems that can be resolved at a lower cost threshold, or if upwind states would reduce their emissions at a lower cost threshold to the extent that they would no longer meet or exceed the 1 percent air quality contribution threshold. *See, e.g.*, 81 FR at 74551–52. *See also Wisconsin*, 938 F.3d at 325

(over-control must be proven through a “‘particularized, as-applied challenge’”) (quoting *EME Homer City Generation*, 572 U.S. at 523–24). The EPA continues to apply this framework for assessing over-control in this proposed rule, and, as discussed in Section VI.D.4 of this proposed rule, does not find any over-control at the proposed stringency to be sufficiently certain to warrant a relaxation in requirements for the sources in any covered state.

This evaluation of cost, NO_x reductions, and air quality improvements, including consideration of whether there is proven over-control, results in EPA’s determination of the appropriate level of upwind control stringency that would result in elimination of emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind areas.

d. Step 4 Approach

The EPA proposes an approach similar to its prior transport rulemakings to implement the necessary emissions reductions through permanent and enforceable measures. The EPA proposes to require EGU sources to participate in an emissions trading program and proposes additional enhancements to the trading regime to maintain the selected control stringency over time and improve emissions performance at individual units, offering a necessary measure of assurance that emissions controls will be operated throughout the ozone season. For non-EGUs, the EPA proposes permanent and enforceable emissions rate limits and work practice standards, and associated compliance requirements, on several types of NO_x-emitting combustion units across several industrial sectors. The measures for both EGUs and non-EGUs are proposed to be required throughout the May 1–September 30 ozone season annually. The EGU program will begin with the 2023 ozone season, and non-EGU implementation will begin with the 2026 ozone season. Refer to Section VII.A of this proposed rule for details on the implementation schedule.

Based on the EPA’s experience in implementing prior transport rulemakings, the Agency is proposing several enhancements to its trading-program approach for implementing good neighbor requirements for EGUs. In CSAPR, the CSAPR Update, and the Revised CSAPR Update, the EPA established interstate trading programs for EGUs to implement the necessary emissions reductions. In each of these

rules, EGUs in each covered state are assigned an emissions budget for their collective emissions. Emissions allowances are allocated to units covered by the trading program, and the covered units then surrender allowances after the close of each control period, usually in an amount equal to their ozone season EGU NO_x emissions. While these programs have been effective in achieving overall reductions in emissions, experience has shown that these programs may not fully reflect in perpetuity the degree of emissions stringency determined necessary to eliminate significant contribution in Step 3 and may not adequately ensure the control of emissions throughout all days of the ozone season. At the same time, the EPA continues to find that an interstate-trading program approach delivers substantial benefits at Step 4 in terms of affording an appropriate degree of compliance flexibility, certainty in emissions outcomes, data and performance transparency, and cost-effective achievement of a high degree of aggregate emissions reductions. As such, EPA proposes to retain an interstate trading program approach while proposing several enhancements to that approach.

Thus, in this rulemaking, the EPA is proposing to include budget-setting procedures in the regulations that will allow state emissions budgets for control periods in 2025 and later years to reflect more current data on the composition and utilization of the EGU fleet (*e.g.*, the 2025 budgets would reflect 2023 data, the 2026 budgets would reflect 2024 data, etc.). These enhancements would enable the trading program to better maintain over time the selected control stringency that was determined to be necessary to address states’ good neighbor obligations with respect to the 2015 ozone NAAQS. In prior programs, where state emissions budgets were static across years rather than calibrated to yearly fleet changes, the EPA has observed instances of units idling their emission controls in the latter years of the program.

In the trading programs established for ozone season NO_x emissions under CSAPR, the CSAPR Update, and the Revised CSAPR Update, the EPA included assurance provisions to limit state emissions to levels below 121 percent of the state’s budget by requiring additional allowance surrenders in the instance that emissions in the state exceed this level. This limit on the degree to which a state’s emissions can exceed its budget is designed to allow for a certain level of year-to-year variability within power sector emissions to account for

fluctuations in demand and EGU operations and is responsive to previous court decisions (see discussion in Section VII.B.4 of this proposed rule). In this action, the EPA again proposes to retain the existing assurance provisions that limit state emissions to levels below 121 percent of the state’s budget by requiring additional allowance surrenders in the instance that emissions in the state exceed this level for the 2023 and 2024 control periods. For control periods in 2025 and later years, the EPA is proposing to maintain the same general approach, but with adjustments that account for actual operational conditions in each control period to determine the specific levels above which additional allowance surrenders would be required. In addition, EPA is also proposing several additional enhancements to the EGU trading program in this action, including routine recalibrations of the total amount of banked allowances, unit-specific backstop daily emissions rates for certain units, and unit-specific secondary emissions limitations for units that contribute to exceedances of the assurance levels, to ensure EGU emissions control operation and associated air quality improvements. Implementation of the proposed EGU emissions reductions using a CSAPR NO_x trading program is further described in Section VII.B of this proposed rule.

In this action, the EPA is also proposing to establish emissions limitations for the non-EGU industry sources listed in Table III.A–1. The EPA has the authority to require emissions limitations from stationary sources, as well as from other sources and emissions activities, under CAA section 110(a)(2)(D)(i)(I). The EPA proposes that requiring NO_x emissions reductions through emissions rate limits from certain non-EGU industry sources that the EPA found at Step 3 to be relatively impactful⁶⁷ on downwind air quality is an effective strategy for reducing regional ozone transport. Therefore, the EPA proposes NO_x emissions limitations and associated compliance requirements for non-EGU sources to ensure the elimination of significant contribution of ozone precursor emissions required under the interstate

⁶⁷ Section III of the Non-EGU Screening Assessment memorandum in the docket for this rulemaking describes EPA’s approach to evaluating impacts on downwind air quality, considering estimated total, maximum, and average contributions from each industry and the total number of receptors with contributions from each industry.

transport provision for the 2015 ozone NAAQS.

Finally, the EPA proposes that the control measures determined to be required for the identified EGU and non-EGU sources apply to both existing units and any new, modified, or reconstructed units meeting the applicability criteria established in this proposal. This is consistent with EPA's transport actions dating back to the NO_x SIP Call and the NO_x Budget Trading Program. In all CSAPR EGU trading programs, for instance, new EGUs are subject to the program, and the EPA established provisions for the allocation of allowances to such units through "new unit set asides." *See, e.g.*, 86 FR 23126. In the NO_x SIP Call, the EPA required that states cover new and existing units in the relevant source sectors through an enforceable cap or other emissions limitation. *See* 40 CFR 51.121(f). EPA's approach of including new units in the NO_x Budget Trading Program promulgated under EPA's CAA section 126 authority was upheld by the D.C. Circuit in *Appalachian Power v. EPA*, 249 F.3d 1032 (2001). The EPA explained in its action:

Once EPA has determined that the emissions from the existing sources in an upwind State already make a significant contribution to one or more petitioning downwind States, any additional emissions from a new source in that upwind State would also constitute a portion of that significant contribution, unless the emissions from that new source are limited to the level of highly effective controls.

Id. at 1058 (quoting EPA 1999 RTC at 39). The court affirmed this approach: "Indeed, it would be irrational to enable the EPA to make findings that a group of sources in an upwind state contribute to downwind nonattainment, but then preclude the EPA from regulating new sources that contribute to that same pollution." *Id.* at 1057–58. The EPA proposes to adopt the same approach in this action, because this reasoning is equally applicable to addressing interstate transport obligations under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS.

2. FIP Authority for Each State Covered by the Proposed Rule

On October 1, 2015, the EPA promulgated a revision to the 2015 8-hour ozone NAAQS, lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).⁶⁸ These revisions of the NAAQS,

⁶⁸ *National Ambient Air Quality Standards for Ozone*, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also

in turn, established a 3-year deadline for states to provide SIP submissions addressing infrastructure requirements under CAA sections 110(a)(1) and 110(a)(2), including the good neighbor provision, by October 1, 2018. If the EPA makes a determination that a state failed to submit a SIP, or if EPA disapproves a SIP submission, then the EPA is obligated under CAA section 110(c) to promulgate a FIP for that state within 2 years. For a more detailed discussion of CAA section 110 authority and timelines, refer to Section III.C of this proposed rule.

The EPA is proposing this FIP action now to address twenty-six states' good neighbor obligations for the 2015 ozone NAAQS, but the EPA will not finalize this FIP action for any state unless and until it has issued a final finding of failure to submit or a final disapproval of that state's SIP submission. The EPA is not required to wait to propose a FIP until after the Agency proposes or finalizes a SIP disapproval or makes a finding of failure to submit.⁶⁹ CAA section 110(c) authorizes EPA to promulgate a FIP "at any time within 2 years" of a SIP disapproval or making a finding of failure to submit. Thus, the EPA may promulgate a FIP contemporaneously with or

described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

⁶⁹ The EPA notes there are three consent decrees to resolve three deadline suits related to EPA's duty to act on good neighbor SIP submissions for the 2015 ozone NAAQS. In *New York et al. v. Regan, et al.* (No. 1:21–CV–00252, S.D.N.Y.), the EPA agreed to take final action on the 2015 ozone NAAQS good neighbor SIP submissions from Indiana, Kentucky, Michigan, Ohio, Texas, and West Virginia by April 30, 2022; however, if the EPA proposes to disapprove any SIP submissions and proposes a replacement FIP by February 28, 2022, then EPA's deadline to take final action on that SIP submission is extended to December 30, 2022. In *Downwinders at Risk et al. v. Regan* (No. 21–cv–03551, N.D. Cal.), the EPA agreed to take final action on the 2015 ozone NAAQS good neighbor SIP submissions from Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, New Jersey, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, West Virginia, and Wisconsin by April 30, 2022; however, if the EPA proposes to disapprove any of these SIP submissions and proposes a replacement FIP by February 28, 2022, then EPA's deadline to take final action on that SIP submission is December 30, 2022. In this CD, the EPA also agreed to take final action on Hawaii's SIP submission by April 30, 2022, and to take final action on the SIP submissions of Arizona, California, Montana, Nevada, and Wyoming by December 15, 2022. In *Our Children's Earth Foundation v. EPA* (No. 20–8232, S.D.N.Y.), the EPA agreed to take final action on the 2015 ozone NAAQS good neighbor SIP submission from New York by April 30, 2022; however, if the EPA proposes to disapprove New York's SIP submission and proposes a replacement FIP by February 28, 2022, then EPA's deadline to take final action on New York's SIP submission is extended to December 30, 2022.

immediately following predicate final action on a SIP (or finding no SIP was submitted). In order to accomplish this, the EPA must necessarily be able to propose a FIP prior to taking final action to disapprove a SIP or make a finding of failure to submit. The Supreme Court recognized this in *EME Homer City* in holding that the EPA is not obligated to first define a state's good neighbor obligations or give the state an additional opportunity to submit an approvable SIP before promulgating a FIP: "EPA is not obliged to wait two years or postpone its action even a single day: The Act empowers the Agency to promulgate a FIP 'at any time' within the two-year limit."⁷⁰ Furthermore, the D.C. Circuit in *Wisconsin* held that states and EPA are obligated to fully address good neighbor obligations for ozone "as expeditiously as practical" and in no event later than the next relevant downwind attainment dates found in CAA section 181(a).⁷¹ In *Maryland v. EPA*, the D.C. Circuit made clear that *Wisconsin's* and *North Carolina's* holdings are fully applicable to the Marginal area attainment date for the 2015 ozone NAAQS,⁷² which fell on August 3, 2021.⁷³ The *Wisconsin* court emphasized that EPA has the authority under CAA section 110 to structure and time its actions in a manner such that the Agency can ensure necessary reductions are achieved by the downwind attainment dates.⁷⁴

On February 22, 2022, the EPA proposed to disapprove 19 good neighbor SIP submissions (Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Tennessee, Texas, West Virginia, Wisconsin).⁷⁵ The EPA is proposing to

⁷⁰ *See EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 509 (2014) (citations omitted).

⁷¹ *Wisconsin v. EPA*, 938 F.3d 303, 313–14 (D.C. Cir. 2019) (citing *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008)).

⁷² *Maryland v. EPA*, 958 F.3d 1185, 1203–04 (D.C. Cir. 2020).

⁷³ *See* CAA section 181(a); 40 CFR 51.1303; *Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards*, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

⁷⁴ 938 F.3d at 318 ("When EPA determines a State's SIP is inadequate, EPA presumably must issue a FIP that will bring that State into compliance before upcoming attainment deadlines, even if the outer limit of the statutory timeframe gives EPA more time to formulate the FIP.") (citing *Sierra Club v. EPA*, 294 F.3d 155, 161 (D.C. Cir. 2002)).

⁷⁵ *See* 87 FR 9463 (Maryland); 87 FR 9484 (New Jersey, New York); 87 FR 9498 (Kentucky); 87 FR 9516 (West Virginia); 87 FR 9533 (Missouri); 87 FR 9545 (Alabama, Mississippi, Tennessee); 87 FR 9798 (Arkansas, Louisiana, Oklahoma, Texas); 87 FR 9838 (Illinois, Indiana, Michigan, Minnesota,

promulgate 2015 ozone NAAQS good neighbor FIPs for these same states, as well as California, Nevada, and Wyoming, but will not finalize a FIP for any of these states unless and until the EPA formally finalizes disapprovals of their SIP submittals or, in the event that any of these states withdraw their good neighbor SIP submissions after this proposal, makes a finding of failure to submit.⁷⁶ See CAA section 110(c).

Additionally, the EPA has taken action that has triggered EPA's obligation under CAA section 110(c) to promulgate FIPs addressing the good neighbor provision for some other states. On December 5, 2019, the EPA published a rule finding that seven states (Maine, New Mexico, Pennsylvania, Rhode Island, South Dakota, Utah, and Virginia) failed to submit or otherwise make complete submissions that address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS.⁷⁷ This finding triggered a 2-year deadline for the EPA to issue FIPs to address the good neighbor provision for these states by January 6, 2022. As the EPA has subsequently received and taken final action to approve good neighbor SIPs from Maine, Rhode Island, and South Dakota,⁷⁸ the EPA currently has authority under the December 5, 2019, finding of failure to submit to issue FIPs for New Mexico, Pennsylvania, Utah, and Virginia. In this proposal, EPA is issuing proposed FIP requirements for Pennsylvania, Utah, and Virginia.⁷⁹

Ohio, Wisconsin). EPA has not yet proposed action on interstate transport SIPs submitted by California, Nevada, Utah, and Wyoming.

⁷⁶ See the document titled "Status of CAA Section 110(a)(2)(D)(i)(I) SIP Submissions for the 2015 Ozone NAAQS for States Covered by the Proposed Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standards," included in the docket for this rulemaking, for additional information on EPA's statutory authorities for this proposed rule.

⁷⁷ *Findings of Failure To Submit a Clean Air Act Section 110 State Implementation Plan for Interstate Transport for the 2015 Ozone National Ambient Air Quality Standards (NAAQS)*, 84 FR 66612 (December 5, 2019, effective January 6, 2020).

⁷⁸ *Air Plan Approval; Maine and New Hampshire; 2015 Ozone NAAQS Interstate Transport Requirements*, 86 FR 45870 (August 17, 2021); *Air Plan Approval; Rhode Island; 2015 Ozone NAAQS Interstate Transport Requirements*, 86 FR 70409 (December 10, 2021); *Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standards; South Dakota; Revisions to the Administrative Rules of South Dakota*, 85 FR 29882 (May 19, 2020).

⁷⁹ The EPA has not yet taken action on a subsequent good neighbor SIP submission from New Mexico or Utah; EPA is not including New Mexico in this proposed action.

C. Other CAA Authorities for This Action

1. Correction of EPA's Determination Regarding Delaware's SIP Submission and Its Impact on EPA's FIP Authority for Delaware

In 2020, the EPA approved an infrastructure SIP submission from Delaware for the 2015 ozone NAAQS, which in part addressed the good neighbor provision at CAA section 110(a)(2)(D)(i)(I).⁸⁰ The EPA concluded that, based on the modeling results presented in a 2018 March memorandum and using a 2023 analytic year, Delaware's largest impact on any potential downwind nonattainment or maintenance receptor was less than 1 percent of the NAAQS.⁸¹ As a result, the EPA found that Delaware would not significantly contribute to nonattainment or interfere with maintenance in any other state.⁸² Therefore, the EPA approved the portion of Delaware's infrastructure SIP that addressed CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS.

Subsequent to the release of the modeling data shared in the March 2018 memorandum and EPA's approval of Delaware's 2015 ozone NAAQS good neighbor SIP submission, the EPA performed updated modeling, as described in Section V of this proposed rule. The data from this updated air quality modeling now show that Delaware is projected to contribute more than 1 percent of the NAAQS to downwind receptors in Bristol, Pennsylvania, in the 2023 analytic year.⁸³ Therefore, in light of the modeling data, EPA is proposing to find that its approval of Delaware's 2015 ozone NAAQS infrastructure SIP submission, with regard only to the portion addressing the good neighbor provision at CAA section 110(a)(2)(D)(i)(I), was in error. Section 110(k)(6) of the CAA gives the Administrator authority, without any

⁸⁰ *Approval and Promulgation of Air Quality Implementation Plans; Delaware; Infrastructure Requirements for the 2015 Ozone Standard and Revisions to Modeling Requirements*, 85 FR 25307 (May 1, 2020).

⁸¹ "Technical Support Document for the Delaware State Implementation Plan for the Infrastructure Requirements for the 2015 Ozone Standard and Revisions to Modeling Requirements" at 16, available in Docket No. EPA-R03-OAR-2019-0663.

⁸² *Id.* at 17. Based on the 2023 modeling from the 2018 memorandum, Delaware was expected in 2023 to have a 0.40 ppb impact on a potential nonattainment receptor in Fairfield, Connecticut (Site ID 90019003) and a 0.38 ppb impact at a potential maintenance receptor in Queens, New York (Site ID 360810124).

⁸³ The contribution from Delaware in 2023 to the receptor in Bristol, Pennsylvania, is 1.36 ppb.

further submission from a state, to revise certain prior actions, including actions to approve SIPs, upon determining that those actions were in error.⁸⁴ The modeling data demonstrate that EPA's prior conclusion that Delaware will not significantly contribute to nonattainment or interfere with maintenance in any other state in the 2023 analytic year was incorrect, which means that EPA's approval of Delaware's good neighbor SIP submission was in error.

Therefore, the EPA proposes to correct the error in Delaware's good neighbor SIP approval. This error correction under CAA section 110(k)(6) would revise the approval of the portion of Delaware's 2015 ozone NAAQS infrastructure SIP that addresses CAA section 110(a)(2)(D)(i)(I) to a disapproval and rescind any statements that the portion of Delaware's infrastructure SIP submission that addresses CAA section 110(a)(2)(D)(i)(I) satisfies the requirements of the good neighbor provision. The EPA is not proposing to correct the elements of Delaware's 2015 ozone NAAQS infrastructure SIP that do not address CAA section 110(a)(2)(D)(i)(I).

As discussed in greater detail in the sections that follow, the EPA is proposing to determine that there are additional emissions reductions that are required for Delaware to satisfy its good neighbor obligations for the 2015 ozone NAAQS. The analysis on which the EPA proposes this conclusion for Delaware is the same, regionally consistent analytical framework on which the Agency proposes FIP action for the other states included in this proposal. The Agency recognizes that it is possible, based on updated information for the final rule—as applied within a regionally consistent analytical framework—that Delaware (or other states for which the EPA proposes FIPs in this action) may be found to have no further interstate transport obligation for the 2015 ozone NAAQS. If such a circumstance were to occur, the EPA anticipates that it would not finalize this proposed error correction or may modify the error correction such that the approval of Delaware's portion of the SIP as it relates to its good neighbor obligations may be affirmed.

⁸⁴ See, e.g., 86 FR 23054, 23068 (error correcting prior approval of Kentucky's transport SIP submission for the 2008 ozone NAAQS to a disapproval and simultaneously promulgating FIP on the basis of the *Wisconsin* and *New York* decisions remanding CSAPR Update and vacating CSAPR Close-Out and new information establishing Kentucky was linked to downwind receptors).

2. Application of Rule in Indian Country and Necessary or Appropriate Finding

The EPA proposes that this rule will be applicable in all areas of Indian country (as defined at 18 U.S.C. 1151) within the covered geography of the proposal, as defined below. Currently, certain areas of Indian country within the geography of the proposal are subject to state implementation planning authority. Other areas of Indian country within that geography would be subject to tribal planning authority, although none of the relevant tribes have as yet sought eligibility to administer a tribal plan to implement the good neighbor provision.⁸⁵ As described later, the EPA is proposing to include all areas of Indian country within the covered geography, notwithstanding whether those areas are currently subject to a state's implementation planning authority or the potential planning authority of a tribe.

With respect to areas of Indian country not currently subject to a state's implementation planning authority—*i.e.*, Indian reservation lands (with the partial exception of reservation lands located in the State of Oklahoma, as described further below) and other areas of Indian country over which the EPA or a tribe has demonstrated that a tribe has jurisdiction—the EPA here proposes a “necessary or appropriate” finding that direct federal implementation of the rule's requirements is warranted under CAA section 301(d)(4) and 40 CFR 49.11(a) (the areas of Indian country subject to this finding are referred to later as the 301(d) FIP areas). Indian Tribes may, but are not required to,

⁸⁵ We note that, consistent with EPA's prior good neighbor actions in California, the regulatory ozone monitor located on the Morongo Band of Mission Indians (“Morongo”) reservation is a projected downwind receptor in 2023. See monitoring site 060651016 in Table V.D–1. We also note that the Temecula, California regulatory ozone monitor is a projected downwind receptor in 2023 and in past regulatory actions has been deemed representative of air quality on the Pechanga Band of Luiseño Indians (“Pechanga”) reservation. See, *e.g.*, *Approval of Tribal Implementation Plan and Designation of Air Quality Planning Area; Pechanga Band of Luiseño Mission Indians*, 80 FR 18120, at 18121–18123 (April 3, 2015); see also monitoring site 060650016 in Table V.D–1. The presence of receptors on, or representative of, the Morongo and Pechanga reservations does not trigger obligations for the Morongo and Pechanga Tribes. Nevertheless, these receptors are relevant to EPA's assessment of any linked upwind states' good neighbor obligations. See, *e.g.*, *Approval and Promulgation of Air Quality State Implementation Plans; California; Interstate Transport Requirements for Ozone, Fine Particulate Matter, and Sulfur Dioxide*, 83 FR 65093 (December 19, 2018). Under 40 CFR 49.4(a), tribes are not subject to the specific plan submittal and implementation deadlines for NAAQS-related requirements, including deadlines for submittal of plans addressing transport impacts.

submit tribal plans to implement CAA requirements, including the good neighbor provision. Section 301(d) of the CAA and 40 CFR part 49 authorize the Administrator to treat an Indian Tribe in the same manner as a state (*i.e.*, TAS) for purposes of developing and implementing a tribal plan implementing good neighbor obligations. See 40 CFR 49.3; see also “Indian Tribes: Air Quality Planning and Management,” hereafter “Tribal Authority Rule,” (63 FR 7254, February 12, 1998). The EPA is authorized to directly implement the good neighbor provision in the 301(d) FIP areas when it finds, consistent with the authority of CAA section 301—which the EPA has exercised in 40 CFR 49.11—that it is necessary or appropriate to do so.⁸⁶

The EPA proposes in this action to find that it is both necessary and appropriate to regulate all new and existing EGU and non-EGU sources meeting the applicability criteria set forth in this proposed rule in all of the 301(d) FIP areas that are located within the geographic scope of coverage of the rule. For purposes of this proposed finding, the geographic scope of coverage of the rule means the areas of the United States encompassed within the borders of the states EPA has determined to be linked at Steps 1 and 2 of the 4-step interstate transport framework.⁸⁷ For EGU applicability criteria, see Section VII.B of this proposed rule; for non-EGU applicability criteria, see Section VII.C of this proposed rule. To EPA's knowledge, only one existing EGU or non-EGU source is located within the 301(d) FIP areas: The Bonanza Power Plant, an EGU source, located on the Uintah and Ouray Reservation, geographically located within the borders of Utah.

This proposed finding is consistent with EPA's prior good neighbor rules. In prior rulemakings under the good neighbor provision, the EPA has

⁸⁶ See *Arizona Pub. Serv. Co. v. U.S. E.P.A.*, 562 F.3d 1116, 1125 (10th Cir. 2009) (stating that 40 CFR 49.11(a) “provides the EPA discretion to determine what rulemaking is necessary or appropriate to protect air quality and requires the EPA to promulgate such rulemaking”); *Safe Air For Everyone v. U.S. Env't Prot. Agency*, No. 05–73383, 2006 WL 3697684, at *1 (9th Cir., Dec. 15, 2006) (“The statutes and regulations that enable EPA to regulate air quality on Indian reservations provide EPA with broad discretion in setting the content of such regulations.”).

⁸⁷ With respect to any non-EGU sources located in the 301(d) FIP areas, the geographic scope of coverage of this proposed rule does not include those states for which EPA proposes to find, based on air quality modeling, that no further linkage exists by the 2026 analytic year at Steps 1 and 2. The states no longer projected to be linked in 2026 are Alabama, Delaware, and Tennessee.

included all areas of Indian country within the geographic scope of those FIPs, such that any new or existing sources meeting the rules' applicability criteria would be subject to the rule irrespective of whether subject to state or tribal underlying CAA planning authority. In CSAPR, the CSAPR Update, and the Revised CSAPR Update, the scope of the emissions trading programs established for EGUs extended to cover all areas of Indian country located within the geographic boundaries of the covered states. In these rules, at the time of their promulgation, no existing units were located in the covered areas of Indian country; under the general applicability criteria of the trading programs, however, any new sources locating in such areas would become subject to the programs. Thus, EPA established a separate allowance allocation that would be available for any new units locating in any of the relevant areas of Indian country. See, *e.g.*, 76 FR at 48293 (describing the CSAPR methodology of allowance allocation under the “Indian country new unit set-aside” provisions); see also *id.* at 48217 (explaining EPA's source of authority for directly regulating in relevant areas of Indian country as necessary or appropriate). Further, in any action in which the EPA subsequently approved a state's SIP submittal to partially or wholly replace the provisions of a CSAPR FIP, EPA has clearly delineated that it will continue to administer the Indian country new unit set aside for sources in any areas of Indian country geographically located within a state's borders and not subject to that state's CAA planning authority, and the state may not exercise jurisdiction over any such sources. See, *e.g.*, 82 FR 46674, 46677 (October 6, 2017) (approving Alabama's SIP submission establishing a state CSAPR trading program for ozone season NO_x, but providing, “The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.”).

In this proposed rule, the EPA proposes to take an approach similar to the prior CSAPR rulemakings with respect to regulating sources in the 301(d) FIP areas.⁸⁸ The EPA believes this approach is necessary and appropriate for several reasons. First, the purpose of this rule is to address the

⁸⁸ See Section VII.B.9 of this action for a discussion of revisions that are proposed in this rulemaking regarding the point in the allowance allocation process at which the EPA would establish set-asides of allowances for units in Indian country not subject to a state's CAA implementation planning authority.

interstate transport of ozone on a national scale, and the technical record establishes that the nonattainment and maintenance receptors located throughout the country are impacted by sources of ozone pollution on a broad geographic scale. The upwind regions associated with each receptor typically span at least two, and often far more, states. Within the broad upwind region covered by this proposal, the EPA proposes to apply—consistent with the methodology of allocating upwind responsibility in prior transport rules going back to the NO_x SIP Call—a uniform level of control stringency. (See Section VI of this proposed rule for a discussion of EPA’s determination of control stringency for this proposal.) Within this approach, consistency in rule requirements across all jurisdictions is vital in ensuring the remedy for ozone transport is, in the words of the Supreme Court, “efficient and equitable,” 572 U.S. 489, 519. In particular, as the Supreme Court found in *EME Homer City Generation*, allocating responsibility through uniform levels of control across the entire upwind geography is “equitable” because, by imposing uniform cost thresholds on regulated States, EPA’s rule subjects to stricter regulation those States that have done relatively less in the past to control their pollution. Upwind States that have not yet implemented pollution controls of the same stringency as their neighbors will be stopped from free riding on their neighbors’ efforts to reduce pollution. They will have to bring down their emissions by installing devices of the kind in which neighboring States have already invested. *Id.*

In the context of addressing regional-scale ozone transport in this proposal, a uniform level of stringency that extends to and includes the 301(d) FIP areas geographically located within the boundaries of the linked upwind states carries significant force. Failure to include all such areas within the scope of the rule creates a significant risk that these areas may be targeted for the siting of facilities emitting ozone-precursor pollutants, in order to avoid the regulatory costs that would be imposed under this proposed rule in the surrounding areas of state jurisdiction. Electricity generation or the production of other goods and commodities may become more cost-competitive at any EGUs or non-EGUs not subject to the rule but located in a geography where all surrounding facilities in the same industrial category are subject to the rule. For instance, the affected EGU source located on the Uintah and Ouray

Reservation of the Ute Tribe is in an area that is interconnected with the western electricity grid and is owned and operated by an entity that generates and provides electricity to customers in several states. It is both necessary and appropriate, in EPA’s view, to avoid creating, via this proposed rule, a structure of incentives that may cause generation or production—and the associated NO_x emissions—to shift into the 301(d) FIP areas to escape regulation needed to eliminate interstate transport under the good neighbor provision.

The EPA believes it is appropriate to propose direct federal implementation of the proposed rule’s requirements in the 301(d) FIP areas at this time rather than at a later date. Tribes have the opportunity to seek TAS and to undertake tribal implementation plans under the CAA. To date, the one tribe which could develop and seek approval of a tribal implementation plan to address good neighbor obligations with respect to an existing EGU in the 301(d) FIP areas for the 2015 ozone NAAQS (or for any other NAAQS), the Ute Indian Tribe of the Uintah and Ouray Reservation, has not expressed an intent to do so. Nor has the EPA heard such intentions from any other tribe, and it would not be reasonable to expect tribes to undertake that planning effort, particularly when no existing sources are currently located on their lands. Further, the EPA is mindful that under court precedent, the EPA and states generally bear an obligation to fully implement any required emissions reductions to eliminate significant contribution under the good neighbor provision as expeditiously as practicable and in alignment with downwind areas’ attainment schedule under the Act. As discussed in Section VII.A of this proposed rule, the EPA anticipates implementing certain required emissions reductions by the 2023 ozone season, the last full ozone season before the 2024 Moderate area attainment date, and other key additional required emissions reductions by the 2026 ozone season, the last full ozone season before the 2027 Serious area attainment date. Absent this proposed federal implementation plan in the 301(d) FIP areas, NO_x emissions from any existing or new EGU or non-EGU sources located in, or locating in, the 301(d) FIP areas within the covered geography of the rule would remain unregulated and could potentially increase. This would be inconsistent with EPA’s overall goal of aligning good neighbor obligations with the downwind areas’ attainment schedule and to achieve emissions

reductions as expeditiously as practicable.

Further, the EPA recognizes that Indian country, including the 301(d) FIP areas, is often home to communities with environmental justice concerns, and these communities may bear a disproportionate level of pollution burden as compared with other areas of the United States. EPA’s draft Strategic Plan for Fiscal Year 2022–2026⁸⁹ includes an objective to promote environmental justice at the Federal, Tribal, state, and local levels and states: “Integration of environmental justice principles into all EPA activities with Tribal governments and in Indian country is designed to be flexible enough to accommodate EPA’s Tribal program activities and goals, while at the same time meeting the Agency’s environmental justice goals.” By including all areas of Indian country within the covered geography of the rule, the EPA is advancing environmental justice, lowering pollution burdens in such areas, and preventing the potential for “pollution havens” to form in such areas as a result of facilities seeking to locate there to avoid the requirements that would otherwise apply outside of such areas under this proposed rule.

Therefore, in order to ensure timely alignment of all needed emissions reductions with the larger timetable of this proposed rule, to ensure equitable distribution of the upwind pollution reduction obligation across all upwind jurisdictions, to avoid perverse economic incentives to locate sources of ozone-precursor pollution in the 301(d) FIP areas, and to deliver greater environmental justice to tribal communities in line with Executive Order 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,⁹⁰ EPA proposes to find it both necessary and appropriate that all existing and new EGU and non-EGU sources that are located in the 301(d) FIP areas within the geographic boundaries of the covered states, and which would be subject to this rule if located within areas subject to state CAA planning authority, should be included in this rule. The EPA proposes this finding under section 301(d)(4) of the Act and 40 CFR 49.11. Further, in order to avoid “unreasonable delay” in

⁸⁹ <https://www.epa.gov/system/files/documents/2021-10/fy-2022-2026-epa-draft-strategic-plan.pdf>

⁹⁰ Executive Order 13985 (January 20, 2021): <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executiveorder-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

promulgating this FIP, as required under section 49.11, the EPA believes it is appropriate to make this proposed finding now, in order to align emissions reduction obligations for any covered new or existing sources in the 301(d) FIP areas with the larger schedule of reductions under this proposed rule. Because all other covered EGU and non-EGU sources within the geography of this proposed rule would be subject to emissions reductions of uniform stringency beginning in the 2023 ozone season, and as necessary to fully and expeditiously address good neighbor obligations for the 2015 ozone NAAQS, there is little benefit to be had by not proposing to include the 301(d) FIP areas in this rule now and a potentially significant downside to not doing so.

The Agency recognizes that Tribal governments may still choose to seek TAS to develop a Tribal plan with respect to the obligations under this proposed rule, and this proposed determination does not preclude the tribes from taking such actions. The EPA will continue to consult with the government of the Ute Indian Tribe of the Uintah and Ouray Reservation, and any other tribe wishing to continue consultation, during the comment period for this proposal. The EPA invites comment on this proposed finding.

a. Indian Country Subject to State Implementation Planning Authority

Following the U.S. Supreme Court decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Public Law 109–59, 119 Stat. 1144, 1937 (August 10, 2005) (“SAFETEA”), to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State’s environmental regulatory programs that were previously approved by the EPA for areas outside of Indian country. The State’s request excluded certain areas of Indian country further described later. In addition, the State only sought approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014).⁹¹

⁹¹ In *ODEQ v. EPA*, the D.C. Circuit held that under the CAA, a state has the authority to implement a SIP in non-reservation areas of Indian country in the state, where there has been no demonstration of tribal jurisdiction. Under the D.C. Circuit’s decision, the CAA does not provide authority to states to implement SIPs in Indian

On October 1, 2020, the EPA approved Oklahoma’s SAFETEA request to administer all the State’s EPA-approved environmental regulatory programs, including the Oklahoma SIP, in the requested areas of Indian country.⁹² As requested by Oklahoma, the EPA’s approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) Qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively “excluded Indian country lands”).

EPA’s approval under SAFETEA expressly provided that to the extent EPA’s prior approvals of Oklahoma’s environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by EPA’s approval of Oklahoma’s SAFETEA request.⁹³ The approval also provided that future revisions or amendments to Oklahoma’s approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).

In a **Federal Register** notice published on February 22, 2022 (87 FR 9798), the EPA proposed to disapprove the portion of an Oklahoma SIP submittal pertaining to the state’s interstate transport obligations under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. Consistent with the D.C. Circuit’s decision in *ODEQ v. EPA* and with EPA’s October 1, 2020 SAFETEA approval, if this disapproval is finalized as proposed, EPA will have authority under CAA section 110(c) to promulgate a FIP as needed to address the

reservations. *ODEQ* did not, however, substantively address the separate authority in Indian country provided specifically to Oklahoma under SAFETEA. That separate authority was not invoked until the State submitted its request under SAFETEA, and was not approved until EPA’s decision, described in this section, on October 1, 2020.

⁹² Available in the docket for this rulemaking.

⁹³ EPA’s prior approvals relating to Oklahoma’s SIP frequently noted that the SIP was not approved to apply in areas of Indian country (consistent with the D.C. Circuit’s decision in *ODEQ v. EPA*) located in the state. See, e.g., 85 FR 20178, 20180 (April 10, 2020). Such prior expressed limitations are superseded by EPA’s approval of Oklahoma’s SAFETEA request.

disapproved aspects of the State’s good neighbor SIP submittal.⁹⁴ In accordance with the discussion above, EPA’s FIP authority in this circumstance would extend to all Indian country in Oklahoma, other than the excluded Indian country lands, as described previously.⁹⁵ Because—per the State’s request under SAFETEA—EPA’s October 1, 2020 approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ v. EPA*, EPA’s FIP authority under CAA section 110(c) would also apply to any Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority. EPA’s FIP authority under CAA section 110(c) would similarly apply to Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority located in any other state within the geographic scope of this proposed rule.

In light of the relevant legal authorities discussed above regarding the scope of the State of Oklahoma’s regulatory jurisdiction under the CAA, the EPA has FIP authority under CAA section 110(c) with respect to all Indian country in Oklahoma other than excluded Indian country lands. To the extent any change occurs in the scope of Oklahoma’s SIP authority in Indian country before the finalization of this proposed rule, such a change may affect the ability of the Agency to exercise the FIP authority provided under section 110(c) of the Act.⁹⁶ In that eventuality,

⁹⁴ The antecedent fact that the state had the authority and jurisdiction to implement requirements under the good neighbor provision, in EPA’s view, supplies the condition necessary for the Agency to exercise its FIP authority to the extent the EPA has disapproved the state’s SIP submission with respect to those requirements. Under CAA section 110(c), the EPA “stands in the shoes of the defaulting state, and all of the rights and duties that would otherwise fall to the state accrue instead to the EPA.” *Central Ariz. Water Conservation Dist. v. EPA*, 990 F.2d 1531, 1541 (9th Cir. 1993).

⁹⁵ With respect to those areas of Indian country constituting “excluded Indian country lands” in the State of Oklahoma, as defined above, the EPA proposes to apply the same necessary or appropriate finding as set forth above with respect to all other 301(d) FIP areas within the geographic scope of coverage of the rule.

⁹⁶ On December 22, 2021, the EPA proposed to withdraw and reconsider the October 1, 2020, SAFETEA approval. See <https://www.epa.gov/ok-proposed-withdrawal-and-reconsideration-and-supporting-information>. The EPA is engaging in further consultation with tribal governments and expects to have discussions with the State of Oklahoma as part of this reconsideration. The EPA also notes that the October 1, 2020, approval is the

and to the extent any such areas would then fall more appropriately within the 301(d) FIP areas as described earlier in this section, EPA's proposed necessary or appropriate finding as set forth above with respect to all other 301(d) FIP areas within the geographic scope of coverage of the rule would then apply.

V. Analyzing Downwind Air Quality Problems and Contributions From Upwind States

A. Selection of Analytic Years for Evaluating Ozone Transport Contributions to Downwind Air Quality Problems

In this section, the EPA describes its process for selecting analytic years for air quality modeling and analyses performed to identify nonattainment and maintenance receptors and identify upwind state linkages. For this proposed rule, the EPA evaluated air quality to identify receptors at Step 1 for three analytic years: 2023, 2026, and 2032. The EPA evaluated interstate contributions to these receptors from individual upwind states at Step 2 for two of these analytic years: 2023 and 2026. In selecting these years, the EPA views 2023 and 2026, in particular, to constitute years by which key emissions reductions from EGUs and non-EGUs can be implemented "as expeditiously as practicable." (The EPA explains in detail in Section VII of this proposed rule its proposed determination that the necessary emissions reductions cannot be achieved any more quickly.) In addition, these years are the last full ozone seasons before the Moderate and Serious area attainment dates for the 2015 ozone NAAQS (ozone seasons run each year from May 1–September 30). In order to demonstrate attainment by these deadlines, downwind states would be required to rely on design values calculated using ozone design values from 2021 through 2023 and 2024 through 2026, respectively. By focusing its analysis, and, potentially, achieving emissions reductions by, the last full ozone seasons before the attainment dates (*i.e.*, in 2023 or 2026), this proposed rule, if finalized, can assist the downwind areas with demonstrating attainment or receiving extensions of attainment dates under CAA section 181(a)(5).

It would not make sense for the EPA to analyze any earlier year than 2023. EPA continues to interpret the good neighbor provision as forward-looking, based on Congress's use of the future-tense "will" in section 110(a)(2)(D)(i),

an interpretation upheld in *Wisconsin*, 938 F.3d at 322. It would be "anomalous," *id.*, for the EPA to impose good neighbor obligations in 2023 and future years based solely on finding that "significant contribution" had existed at some time in the past. *Id.*

Applying this framework in this proposal, the EPA recognizes that the 2021 Marginal area attainment date has already passed. Further, based on the timing of this proposal, it will not be possible to finalize this rulemaking before the 2022 ozone season has also passed. Thus, EPA has selected 2023 as the first appropriate future analytic year for this proposed rule because it reflects implementation of good neighbor obligations as expeditiously as practicable and coincides with the August 3, 2024, Moderate area attainment date established for the 2015 ozone NAAQS.

The EPA conducted additional analysis for the 2026 and 2032 analytic years in order to ensure a complete Step 3 analysis for future ozone transport contributions to downwind areas. These years also coincide with the last full ozone seasons before future attainment dates for the 2015 ozone NAAQS, and 2026 coincides with the ozone season by which key additional emissions reductions from EGUs and non-EGUs become available. Thus, the EPA analyzed additional years beyond 2023 to determine whether any additional emissions reductions that are impossible to obtain by the 2024 attainment date could still be necessary in order to fully address significant contribution, taking into account the 2027 Serious area attainment date and the 2033 Severe area attainment date for the 2015 ozone NAAQS. In all cases, the proposed implementation of necessary emissions reductions is as expeditiously as practicable, with all possible emissions reductions implemented by the next applicable attainment date.

The timing framework and selection of analytic years set forth above comports with the D.C. Circuit's direction in *Wisconsin* that implementing good neighbor obligations beyond the dates established for attainment may be justified on a proper showing of impossibility or necessity. See 938 F.3d at 320.

The remainder of this section includes information on (1) the air quality modeling platform used in support of the proposed rule with a focus on the base year and future year base case emissions inventories, (2) the method for projecting design values in 2023, 2026, and 2032, and (3) the approach for calculating ozone contributions from upwind states. The

Agency also provides the design values for nonattainment and maintenance receptors and the predicted interstate contributions that are at or above the 1 percent of the NAAQS screening threshold. The 2016 base period and 2023, 2026, and 2032 future design values and contributions for all ozone monitoring sites are provided in the docket for this proposed rule. The Air Quality Modeling Technical Support Document (AQM TSD) in the docket for this proposed rule contains more detailed information on the air quality modeling aspects of this rule.

B. Overview of Air Quality Modeling Platform

The EPA used version 2 of the 2016-based modeling platform for the air quality modeling for this proposed rule. This modeling platform includes 2016 base year emissions from anthropogenic and natural sources and 2016 meteorology. The platform also includes anthropogenic emissions projections for 2023, 2026, and 2032. The emissions data contained in this platform represent an update to the 2016 version 1 inventories that were developed by the EPA, the Multi-Jurisdictional Organizations (MJOs), and state and local air agencies as part of the Emissions Inventory Collaborative Process.

The air quality modeling for this proposal was performed for a modeling region (*i.e.*, modeling domain) that covers the contiguous 48 states using a horizontal resolution of 12 x 12 km. The EPA used the CAMx version 7.10 for air quality modeling since this was the most recent version of CAMx available at the time the air quality modeling was performed.⁹⁷ Additional information on the 2016-based air quality modeling platform can be found in the AQM TSD.

C. Emissions Inventories

The EPA developed emissions inventories for this proposal, including emissions estimates for EGUs, non-EGU point sources, stationary nonpoint sources, onroad mobile sources, nonroad mobile sources, other mobile sources, wildfires, prescribed fires, and biogenic emissions that are not the direct result of human activities. EPA's air quality modeling relies on this comprehensive set of emissions inventories because emissions from multiple source categories are needed to model ambient air quality and to facilitate comparison of model outputs with ambient measurements.

subject of a pending challenge in federal court. *Pawnee Nation of Oklahoma v. Regan*, No. 20–9635 (10th Cir.).

⁹⁷ Ramboll Environment and Health, January 2021, <http://www.camx.com>.

To prepare the emissions inventories for air quality modeling, the EPA processed the emissions inventories using the Sparse Matrix Operator Kernel Emissions (SMOKE) Modeling System version 4.8.1 to produce the gridded, hourly, speciated, model-ready emissions for input to the air quality model. Additional information on the development of the emissions inventories and on data sets used during the emissions modeling process are provided in the TSD titled, "Preparation of Emissions Inventories for the 2016v2 North American Emissions Modeling Platform," hereafter known as the "Emissions Modeling TSD." This TSD is available in the docket for this rule.

1. Foundation Emissions Inventory Data Sets

The 2016v2 emissions platform is comprised of data from various sources including data developed using models, methods, and source datasets that became available in calendar years 2020 and 2021, in addition to data from the Inventory Collaborative 2016 version 1 (2016v1) Emissions Modeling Platform, released in October 2019. The 2016v1 platform was developed through a national collaborative effort between the EPA and state and local agencies along with MJOs and included emissions inventories for the years 2016, 2023, and 2028. For this proposed rule, emissions inventories were developed for the years 2016, 2023, 2026, and 2032 that represent changes in activity data and of predicted emissions reductions from on-the-books actions, planned emissions control installations, and promulgated federal measures that affect anthropogenic emissions.⁹⁸ The 2016 emissions inventories for the U.S. include data derived from the 2017 National Emissions Inventory (2017NEI) and some data derived from the 2014 National Emissions Inventory (NEI), version 2 (2014NEIv2). All of the inventory sectors were updated to better represent the year 2016 through the incorporation of 2016-specific state and local data along with nationally applied adjustment methods. The following sections provide an overview of the construct of the 2016v2 emissions and projections.

⁹⁸ Biogenic emissions and emissions from wildfires and prescribed fires were held constant between 2016 and the future years because (1) these emissions are tied to the 2016 meteorological conditions and (2) the focus of this rule is on the contribution from anthropogenic emissions to projected ozone nonattainment and maintenance.

2. Development of Emissions Inventories for EGUs

Annual NO_x and SO₂ emissions for EGUs in the 2016 base year inventory are based primarily on data from continuous emissions monitoring systems (CEMS) and other monitoring systems allowed for use by qualifying units under 40 CFR part 75, with other EGU pollutants estimated using emissions factors and annual heat input data reported to the EPA. For EGUs not reporting under part 75, the EPA used data submitted to the NEI and the 2016v1 platform by the states. Emissions data for EGUs that did not have data provided for the year 2016 were pulled forward from data submitted for the 2014 NEI. The Air Emissions Reporting Rule, (80 FR 8787; February 19, 2015), requires that Type A point sources large enough to meet or exceed specific thresholds for emissions be reported to the EPA every year, while the smaller Type B point sources must only be reported to EPA every 3 years.

The EPA projected future 2023, 2026, and 2032 baseline EGU emissions using the version 6—Summer 2021 Reference Case of the Integrated Planning Model (IPM).⁹⁹ IPM, developed by ICF Consulting, is a state-of-the-art, peer-reviewed, multi-regional, dynamic, deterministic linear programming model of the contiguous U.S. electric power sector. It provides forecasts of least cost capacity expansion, electricity dispatch, and emissions control strategies while meeting energy demand and environmental, transmission, dispatch, and reliability constraints. The EPA has used IPM for over two decades, including all prior implemented CSAPR rulemakings, to better understand power sector behavior under future business-as-usual conditions and to evaluate the economic and emissions impacts of prospective environmental policies. The model is designed to reflect electricity markets as accurately as possible. The EPA uses the best available information from utilities, industry experts, gas and coal market experts, financial institutions, and government statistics as the basis for the detailed power sector modeling in IPM. The model documentation provides additional information on the assumptions discussed here as well as all other model assumptions and inputs.⁹⁹

The IPM version 6—Summer 2021 Reference Case incorporated recent

⁹⁹ Detailed information and documentation of EPA's Base Case, including all underlying assumptions, data sources, and architecture parameters can be found on EPA's website at: <https://www.epa.gov/airmarkets/epas-power-sector-modeling-platform-v6-using-ipm-summer-2021-reference-case>.

updates through the Summer of 2021 to account for updated federal and state environmental regulations (including Renewable Portfolio Standards (RPS), Clean Energy Standards (CES) and other state mandates), fleet changes (committed EGU retirements and new builds), electricity demand, technology cost and performance assumptions from recent data (for renewables adopting from National Renewable Energy Lab (NREL's) Annual Technology Baseline 2020 and for fossil sources from U.S. Energy Information Agency's (EIA) Annual Energy Outlook (AEO) 2020. Natural gas and coal price projections reflect data developed in Fall 2020. The inventory of EGUs provided as an input to the model was the National Electric Energy Data System (NEEDS) Summer 2021 version and is available on EPA's website.¹⁰⁰ This version of NEEDS reflects announced retirements and under construction new builds known as of early summer 2021. This projected base case accounts for the effects of the finalized Mercury and Air Toxics Standards rule, CSAPR, the CSAPR Update, the Revised CSAPR Update, New Source Review settlements, the final Effluent Limitation Guidelines (ELG) Rule, the Coal Combustion Residual (CCR) Rule, and other on-the-books federal and state rules (including renewable energy tax credit extensions from the Consolidated Appropriations Act of 2021) through early 2021 impacting SO₂, NO_x, directly emitted particulate matter, CO₂, and power plant operations. It also includes final actions the EPA has taken to implement the Regional Haze Rule and BART requirements. IPM has projected output years for 2023 and 2025. IPM year 2025 outputs were adjusted for known retirements to be reflective of year 2026, and IPM year 2030 outputs were used for the year 2032 as is specified by the mapping of IPM output years to specific years.

Additional 2023 through 2026 EGU emissions baseline levels were developed through engineering analytics as an alternative approach that did not involve IPM. The EPA developed this inventory for use in Step 3 of this final rule, where it determines emissions reduction potential and corresponding state-level emissions budgets. IPM includes optimization and perfect foresight in solving for least cost dispatch. Given that this final rule will likely become effective immediately prior to the start of the 2023 ozone season, the EPA is adopting a similar approach to the CSAPR Update and the

¹⁰⁰ Available at <https://www.epa.gov/airmarkets/national-electric-energy-data-system-needs-v6>.

Revised CSAPR Update where it relied on IPM in a relative way in Step 3 to avoid overstating optimization and dispatch decisions in state-emissions budget quantification that may not be possible in a short time frame. The EPA does this by using the difference in emissions rate observed between IPM runs with and without the cost threshold applied, rather than using absolute values. In both the CSAPR Update and in this rule at Step 3, EPA complemented that projected IPM EGU outlook with historical (*e.g.*, engineering analytics) perspective based on historical data that only factors in known changes to the fleet. This 2023 engineering analytics data set is described in more detail in the Ozone Transport Policy Analysis Proposed Rule TSD and corresponding Appendix A: State Emissions Budgets Calculations and Underlying Data. The Engineering Analysis used in Step 3 is also discussed further in Section VII.B of this proposed rule.

Both IPM and the Engineering Analytics tools are valuable for estimating future EGU emissions and examining the cone of uncertainty around any future sector-level inventory estimate. A key difference between the two tools is that IPM reflects both announced and projected changes in fleet operation, whereas the Engineering Analytics tool only reflects announced changes. By not including projected changes that are anticipated in response to market forces and fleet trends, the Engineering Analysis is deliberately conservative in its estimate of change in the power sector. Throughout all of the CSAPR rules to date, and prior interstate transport actions, the EPA has used IPM at Steps 1 and 2 as it is best suited for projecting emissions in an airshed, at projecting emissions for time horizons more than a few years out (for which changes would not yet be announced and thus projecting changes is critical), and for scenarios where the assumed change in emissions is not being codified into a state emissions reduction requirement. Using IPM at Steps 1 and 2 helps the EPA avoid overstating future year receptor values (Step 1) and future year linkages (Step 2) by reflecting reductions anticipated to occur within the airshed in the relevant timeframe.

Engineering analytics has been a useful tool for Step 3 state-level emissions reduction estimates in CSAPR rulemaking, because at that step EPA is dealing with more geographic granularity (state-level as opposed to regional air shed), more near-term (as opposed to medium-term) assessments, and scenarios where reduction estimates are codified into regulatory

requirements. Using the Engineering Analytics tool at this step ensures that the EPA is not codifying into the base case, and consequently into state emissions budgets, changes in the power sector that are merely modeled to occur rather than announced by real-world actors.

Finally, both in the Revised CSAPR Update and in this rule, the EPA was able to use the Air Quality Assessment Tool to verify that regardless of which EGU inventory is used, the 2023 starting geography of the program is not impacted. In other words, regardless of whether a stakeholder takes a more comprehensive view of the EGU future (IPM) or a more conservative view of change in the EGU fleet (Engineering Analysis) the starting geography would be the same. This finding is consistent with the observation that EGUs are now less than 10% of the total ozone-season NO_x inventory and the degree of near-term difference between the IPM and Engineering Analytic regional projections is relatively small on the regional level. While the EPA continues to believe that IPM is best suited for Step 1 and Step 2, and engineering analytics is best suited for Step 3 efforts in this rulemaking, the Agency is requesting comment on the EGU emissions inventory most reasonable for Step 1 and Step 2 in the analysis. The Ozone Transport Policy Analysis Proposed Rule TSD contains data on 2023 and 2026 AQ impacts of each dataset.

3. Development of Emissions Inventories for Non-EGU Point Sources

The updates to the non-EGU point source emissions include a few sources being moved to the EGU inventory and additional control efficiency information for the year 2016. In the 2016v2 platform, some non-EGU point source emissions were based on data submitted for 2016, others were projected from 2014 to 2016, and the emissions for any remaining small sources were kept at 2014 levels. Prior to air quality modeling, the emissions inventories were processed into a format that is appropriate for the air quality model to use. The future year non-EGU point inventories were grown from 2016 to the future years using factors based on the AEO 2021 except for limited cases where errors were identified with the AEO 2021 data in which case data from AEO 2020 were used. The future year inventories reflect emissions reductions due to national and local rules, control programs, plant closures, consent decrees, and settlements. Reductions from several Maximum Achievable Control Technology and

National Emissions Standards for Hazardous Air Pollutants (NESHAP) standards are included. Projection approaches for corn ethanol and biodiesel plants, refineries and upstream impacts represent requirements pursuant to the Energy Independence and Security Act of 2007 (EISA).

Aircraft emissions and ground support equipment at airports are represented as point sources and are based on adjustments to emissions in the January 2021 version of the 2017 NEI (see <https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data> for data and a TSD). A notable update in the January 2021 version of the 2017 NEI as compared to the April 2020 version was a correction to some double counting of some airport emissions. This correction is incorporated into the inventories for this proposed rule. The EPA developed and applied factors to adjust the 2017 airport emissions to 2016, 2023, 2026, and 2032 based on activity growth projected by the Federal Aviation Administration 2019 Terminal Area Forecast ¹⁰¹ system, the latest available version at the time the factors were developed.

Emissions at rail yards were represented as point sources. The 2016 rail yard emissions are largely consistent with the 2017 NEI rail yard emissions. The 2016 and 2023 rail yard emissions were developed through the 2016v1 Inventory Collaborative process, with the 2026 emissions interpolated between the 2023 and 2028 emissions from 2016v1 rail yard emissions were interpolated from the 2016 and 2023 emissions. Class I rail yard emissions were projected based on the AEO freight rail energy use growth rate projections for 2016, 2023, and 2032 with the fleet mix assumed to be constant throughout the period.

Point source oil and gas emissions for 2016 were based on the 2016v1 point inventory except that an inventory generated by the Western Regional Air Partnership (WRAP) ¹⁰² was used for the states of Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming. The 2016 oil and gas inventories were first projected to 2019 values based on actual production data, and those 2019 emissions were projected to 2023, 2026, and 2032 using regional projection factors by product type based on AEO 2021 projections. NO_x and VOC reductions that are co-

¹⁰¹ https://www.faa.gov/data_research/aviation/taf/.

¹⁰² http://www.wrapair2.org/pdf/WRAP_OGWG_Report_Baseline_17Sep2019.pdf.

benefits to the NESHAP and New Source Performance Standards (NSPS) for Stationary Reciprocating Internal Combustion Engines (RICE) are reflected for select source categories. In addition, Natural Gas Turbines and Process Heaters NSPS NO_x controls and NSPS Oil and Gas VOC controls¹⁰³ are reflected for select source categories. The WRAP future year inventory was used in WRAP states in all future years.¹⁰⁴

4. Development of Emissions Inventories for Onroad Mobile Sources

Onroad mobile sources include exhaust, evaporative, and brake and tire wear emissions from vehicles that drive on roads, parked vehicles, and vehicle refueling. Emissions from vehicles using regular gasoline, high ethanol gasoline, diesel fuel, and electric vehicles were represented, along with buses that used compressed natural gas. The EPA developed the onroad mobile source emissions for states other than California using EPA's Motor Vehicle Emissions Simulator (MOVES). MOVES3 was released in November 2020 and has been followed by some minor releases that improved the usage of the model but that do not have substantive impacts on the emissions estimates. For this proposal, MOVES3 was run using inputs provided by state and local agencies through the 2017 NEI where available, in combination with nationally available data sets to develop a complete inventory. Onroad emissions for 2016v2 were developed based on emissions factors output from MOVES3 run for the year 2016, coupled with activity data (e.g., vehicle miles traveled and vehicle populations) representing the year 2016. The 2016 activity data were provided by some state and local agencies through the 2016v1 process, and the remaining activity data were derived from the 2017 NEI. The onroad emissions were computed within SMOKE by multiplying emissions factors developed using MOVES with the appropriate activity data. Onroad mobile source emissions for California were consistent with the emissions data provided by the state.

The future-year emissions estimates for onroad mobile sources represent all national control programs known at the

time of modeling including rules newly added in MOVES3: The Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles (HDGHG)—Phase 2¹⁰⁵ and the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule.¹⁰⁶ Other finalized rules incorporated into the onroad mobile source emissions estimates include: Tier 3 Standards (March 2014), the Light-Duty Greenhouse Gas Rule (March 2013), Heavy (and Medium)-Duty Greenhouse Gas Rule (August 2011), the Renewable Fuel Standard (February 2010), the Light Duty Greenhouse Gas Rule (April 2010), the Corporate-Average Fuel Economy standards for 2008–2011 (April 2010), the 2007 Onroad Heavy-Duty Rule (February 2009), and the Final Mobile Source Air Toxics Rule (MSAT2) (February 2007). Estimates of the impacts of rules that were in effect in 2016 are included in the 2016 base year emissions at a level that corresponds to the extent to which each rule had penetrated into the fleet and fuel supply by the year 2016. Local control programs such as the California LEV III program for criteria pollutants are included in the onroad mobile source emissions.

The future year onroad emissions reflect projected changes to fuel properties and usage, along with the impact of the rules included in MOVES3 for each of the future years. MOVES was run for the years 2023, 2026, and 2032 to generate the emissions factors relevant to those years. Future year activity data for onroad mobile sources were provided by some state and local agencies, and otherwise were projected to 2023, 2026, and 2032 by first projecting the 2016 activity to year 2019 based on county level vehicle miles traveled (VMT) from the Federal Highway Administration, and then from 2019 to the future years using AEO 2021-based factors. The future year emissions were computed within SMOKE by multiplying the future year emissions factors developed using MOVES with the year-specific activity data.

¹⁰⁵ The effect of the HDGHG Phase 2 rule on criteria pollutants is estimated in Table 5–48 of the Regulatory Impact Analysis, available from <https://nepis.epa.gov/Exec/QueryPDF.cgi/P100P7NS.PDF?Dockey=P100P7NS.PDF>.

¹⁰⁶ Information on the SAFE vehicles rule is available from <https://www.epa.gov/regulations-emissions-vehicles-and-engines/safer-affordable-fuel-efficient-safe-vehicles-final-rule>. Preliminary analysis by the Office of Transportation and Air Quality of the impact of this rule on criteria pollutants show impacts of less than 1 percent for VOC and no impact for NO_x.

5. Development of Emissions Inventories for Commercial Marine Vessels

The commercial marine vessel (CMV) emissions in the 2016 base case emissions inventory for this rule were based on those in the 2017 NEI. Factors were then applied to adjust the 2017 NEI emissions backward to represent emissions for the year 2016. The CMV emissions reflect reductions associated with the Emissions Control Area proposal to the International Maritime Organization control strategy (EPA–420–F–10–041, August 2010); reductions of NO_x, VOC, and CO emissions for new C3 engines that went into effect in 2011; and fuel sulfur limits that went into effect prior to 2016. The cumulative impacts of these rules through 2023, 2026 and 2030¹⁰⁷ were incorporated into the projected emissions for CMV sources. The CMV emissions were split into emissions inventories from the larger category 3 (C3) engines, and those from the smaller category 1 and 2 (C1C2) engines. CMV emissions in California are based on emissions provided by the state. The CMV emissions are consistent with the emissions for the 2016v1 platform updated CMV emissions released by February 2020 although they include future years of 2026 and 2030 instead of 2028.

6. Development of Emissions Inventories for Other Nonroad Mobile Sources

Nonroad mobile source emissions inventories (other than CMV, locomotive, and aircraft emissions) were developed from monthly, county, and process level emissions output from MOVES3. Types of nonroad equipment include recreational vehicles, pleasure craft, and construction, agricultural, mining, and lawn and garden equipment. State-submitted emissions data for nonroad sources were used for California.

The EPA also ran MOVES3 for 2023, 2026, and 2032 to prepare nonroad mobile emissions inventories for future years. The nonroad mobile emissions control programs include reductions to locomotives, diesel engines, and recreational marine engines, along with standards for fuel sulfur content and evaporative emissions. A comprehensive list of control programs included for mobile sources is available in the Emissions Modeling TSD.

¹⁰⁷ CMV emissions were projected out to 2030 instead of 2032 because that was the last year of data available in a dataset used in the projections process. The year 2030 inventories were used in the 2032 emissions case.

¹⁰³ On November 15, 2021, the EPA published proposed revisions to standards of performance for new, reconstructed, and modified sources and proposed revisions to emissions guidelines for existing sources in the oil and natural gas sector at 86 FR 63110. Emissions reductions from proposed federal regulatory programs are not included in EPA's baseline analyses until they have been finalized.

¹⁰⁴ http://www.wrapair2.org/pdf/WRAP_OGWG_2028_OTB_RevFinalReport_05March2020.pdf.

Line haul locomotives are also considered a type of nonroad mobile source but the emissions inventories for locomotives were not developed using MOVES3. Year 2016 and 2023 locomotive emissions were developed through the 2016v1 process and the year 2016 emissions are mostly consistent with those in the 2017 NEI. The projected locomotive emissions for 2023, 2026, and 2030¹⁰⁸ were developed by applying factors to the base year emissions using activity data based on AEO freight rail energy use growth rate projections along with emissions rates adjusted to account for recent historical trends.

7. Development of Emissions Inventories for Nonpoint Sources

Some emissions for stationary nonpoint sources in the 2016 base case emissions inventory come from the 2017 NEI adjusted to 2016 levels, while others are based on data from the 2014NEIv2 adjusted to reflect year 2016 more closely using factors based on changes to human population from 2014 to 2016. Stationary nonpoint sources include evaporative sources, consumer products, fuel combustion that is not captured by point sources, agricultural livestock, agricultural fertilizer, residential wood combustion, fugitive dust, and oil and gas sources. The emissions sources based on the 2017 NEI include agricultural livestock, fugitive dust, residential wood combustion, waste disposal (including composting), bulk gasoline terminals, and miscellaneous non-industrial sources such as cremation, hospitals, lamp breakage, and automotive repair shops. A new method for solvent VOC emissions was used.¹⁰⁹

Where states provided the Inventory Collaborative information about projected control measures or changes in nonpoint source emissions for 2016v1 or 2016v2, those inputs were incorporated into the projected inventories for 2023, 2026, and 2032 to the extent possible. Where possible, projection factors based on the AEO were based on AEO 2021. Adjustments for state fuel sulfur content rules for fuel oil in the Northeast were included. Projected emissions for portable fuel containers reflect the impact of projection factors required by the final MSAT2 rule and the EISA, including updates to cellulosic ethanol plants, ethanol transport working losses, and ethanol distribution vapor losses.

¹⁰⁸ The farthest out year for which locomotive emissions were projected was 2030 and those were used in the 2032 case.

¹⁰⁹ <https://doi.org/10.5194/acp-21-5079-2021>.

For 2016, nonpoint oil and gas emissions inventories were developed based on a run of the 2017 NEI version of the EPA Oil and Gas Tool with data for year 2016 coupled with the WRAP inventory for production-related nonpoint oil and gas emissions in the states of Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming, and a California Air Resources Board-provided inventory was used for emissions in California. Nonpoint oil and gas emissions in other states and exploration-related emissions in the WRAP states were based on a run of the 2017 NEI version of the EPA Oil and Gas Tool with input data for the year 2016. The 2016 oil and gas inventories were first projected to 2019 values based on actual production data, and those 2019 emissions were projected to 2023, 2026, and 2032 using regional projection factors by product type based on AEO 2021 projections. NO_x and VOC reductions that are co-benefits to the NESHAP and NSPS for RICE are reflected for select source categories. In addition, Natural Gas Turbines and Process Heaters NSPS NO_x controls and NSPS Oil and Gas VOC controls are reflected for select source categories. The WRAP future year inventory was used in WRAP states in all future years.¹¹⁰

D. Air Quality Modeling To Identify Nonattainment and Maintenance Receptors

In this section, the Agency describes the air quality modeling and analyses performed in Step 1 to identify locations where the Agency expects there to be nonattainment or maintenance receptors for the 2015 ozone NAAQS in the 2023, 2026, and 2032 analytic future years. Where EPA's analysis shows that an area or site does not fall under the definition of a nonattainment or maintenance receptor in 2023, that site is excluded from further analysis under EPA's good neighbor framework.

In this proposed rule, the EPA is applying the same approach used in the CSAPR Update and the Revised CSAPR Update to identify nonattainment and maintenance receptors for the 2008 ozone NAAQS. See 86 FR 23078–79.

EPA's approach gives independent effect to both the "contribute significantly to nonattainment" and the "interfere with maintenance" prongs of section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit's direction in *North*

Carolina.¹¹¹ Further, in its decision on the remand of the CSAPR from the Supreme Court in the *EME Homer City* case, the D.C. Circuit confirmed that EPA's approach to identifying maintenance receptors in the CSAPR comported with the court's prior instruction to give independent meaning to the "interfere with maintenance" prong in the good neighbor provision. *EME Homer City II*, 795 F.3d at 136.

In the CSAPR Update and the Revised CSAPR Update, the EPA identified nonattainment receptors as those monitoring sites that are projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as the NO_x SIP Call and CAIR, where the EPA defined nonattainment receptors as those areas that both currently monitor nonattainment and that the EPA projects will be in nonattainment in the future compliance year.¹¹²

The Agency explained in the NO_x SIP Call and CAIR and then reaffirmed in the CSAPR Update that the EPA has the most confidence in our projections of nonattainment for those counties that also measure nonattainment for the most recent period of available ambient data. The EPA separately identified maintenance receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that accounts for historical variability in air quality at that receptor. The variability in air quality was determined by evaluating the "maximum" future design value at each receptor based on a projection of the maximum measured design value over the relevant period. The EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor (*i.e.*, ozone conducive meteorology). The EPA also recognizes that previously experienced meteorological conditions (*e.g.*, dominant wind direction, temperatures, and air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the

¹¹¹ 531 F.3d at 910–911 (holding that the EPA must give "independent significance" to each prong of CAA section 110(a)(2)(D)(i)(I)).

¹¹² See 63 FR 57375, 57377 (October 27, 1998); 70 FR 25241 (January 14, 2005). See also *North Carolina*, 531 F.3d at 913–914 (affirming as reasonable EPA's approach to defining nonattainment in CAIR).

¹¹⁰ http://www.wrapair2.org/pdf/WRAP_OGWG_2028_OTB_RevFinalReport_05March2020.pdf.

future. The maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur.¹¹³ The projected maximum design value is used to identify upwind emissions that, under those circumstances, could interfere with the downwind area's ability to maintain the NAAQS.

Therefore, applying this methodology in this proposed rule, EPA assessed the magnitude of the maximum projected design values for 2023, 2026, and 2032 at each receptor in relation to the 2015 ozone NAAQS and, where such a value exceeds the NAAQS, the EPA determined that receptor to be a "maintenance" receptor for purposes of defining interference with maintenance, consistent with the method used in CSAPR and upheld by the D.C. Circuit in *EME Homer City II*.¹¹⁴ That is, monitoring sites with a maximum design value that exceeds the NAAQS are projected to have maintenance problems in the future analytic years.¹¹⁵

Recognizing that nonattainment receptors are also, by definition, maintenance receptors, the EPA often uses the term "maintenance-only" to refer to receptors that are not also

nonattainment receptors. Consistent with the concepts for maintenance receptors, as described above, the EPA identifies "maintenance-only" receptors as those monitoring sites that have projected average design values above the level of the applicable NAAQS, but that are not currently measuring nonattainment based on the most recent official design values. In addition, those monitoring sites with projected average design values below the NAAQS, but with projected maximum design values above the NAAQS are also identified as "maintenance-only" receptors, even if they are currently measuring nonattainment based on the most recent official design values.

Consistent with EPA's modeling guidance, the 2016 base year and future year air quality modeling results were used in a relative sense to project design values for 2023, 2026, and 2032. That is, the ratios of future year model predictions to base year model predictions are used to adjust ambient ozone design values¹¹⁶ up or down depending on the relative (percent) change in model predictions for each location. The modeling guidance recommends using measured ozone concentrations for the 5-year period centered on the base year as the air quality data starting point for future year projections. This average design value is used to dampen the effects of inter-annual variability in meteorology on ozone concentrations and to provide a reasonable projection of future air quality at the receptor under average conditions. In addition, the Agency calculated maximum design values from within the 5-year base period to represent conditions when meteorology is more favorable than average for ozone formation. Because the base year for the air quality modeling used in this proposed rule is 2016, measured data for 2014–2018 (*i.e.*, design values for 2016, 2017, and 2018) were used in order to project average and maximum design values in 2023, 2026, and 2032.

The ozone predictions from the 2016 and future year air quality model simulations were used to project 2016–2018 average and maximum ozone design values to 2023, 2026, and 2032 using an approach similar to the approach in EPA's guidance for attainment demonstration modeling. This guidance recommends using model predictions from the 3 x 3 array of grid cells¹¹⁷ surrounding the location of the

monitoring site to calculate a Relative Response Factor (RRF) for that site.¹¹⁸ The 2016–2018 base period average and maximum design values were multiplied by the RRF to project each of these design values to each of the three future years. In this manner, the projected design values are grounded in monitored data, and not the absolute model-predicted future year concentrations. Following the approach in the CSAPR Update and the Revised CSAPR Update, the EPA also projected future year design values based on a modified version of the "3 x 3" approach for those monitoring sites located in coastal areas. In this alternative approach, EPA eliminated from the RRF calculations the modeling data in those grid cells that are dominated by water (*i.e.*, more than 50 percent of the area in the grid cell is water) and that do not contain a monitoring site (*i.e.*, if a grid cell is more than 50 percent water but contains an air quality monitor, that cell would remain in the calculation). The choice of more than 50 percent of the grid cell area as water as the criteria for identifying overwater grid cells is based on the treatment of land use in the Weather Research and Forecasting model (WRF).¹¹⁹ Specifically, in the WRF meteorological model those grid cells that are greater than 50% overwater are treated as being 100 percent overwater. In such cases the meteorological conditions in the entire grid cell reflect the vertical mixing and winds over water, even if part of the grid cell also happens to be over land with land-based emissions, as can often be the case for coastal areas. Overlaying land-based emissions with overwater meteorology may be representative of conditions at coastal monitors during times of on-shore flow associated with synoptic conditions or sea-breeze or lake-breeze wind flows. But there may be other times, particularly with off-shore wind flow, when vertical mixing of land-based emissions may be too

¹¹³ The EPA's air quality modeling guidance identifies the use of the highest of the relevant base period design values as a means to evaluate future year attainment under meteorological conditions that are especially conducive to ozone formation. See U.S. Environmental Protection Agency, 2018. Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, PM_{2.5}, and Regional Haze, Research Triangle Park, NC.

¹¹⁴ See 795 F.3d at 136.

¹¹⁵ The EPA issued a memorandum in October 2018, providing additional information to states developing interstate transport SIP submissions for the 2015 8-hour ozone NAAQS concerning considerations for identifying downwind areas that may have problems maintaining the standard at Step 1 of the 4-step interstate transport framework. See Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018 ("October 2018 memorandum"), available in Docket No. EPA-HQ-OAR-2021-0663 or at <https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs>. The EPA does not propose to adopt the information or suggested analytical approaches in that memorandum in this proposed rule proposing FIPs. Potential alternative approaches would introduce unnecessary and substantial additional analytical burdens that could frustrate timely and efficient implementation of good neighbor obligations. In addition, the information supplied in that memorandum is now outdated due to several additional years of air quality monitoring data and updated modeling results. EPA's current approach to defining "maintenance" receptors has been upheld and continues to provide an appropriate approach to addressing the "interference with maintenance" prong of the Good Neighbor provision. See *EME Homer City*, 795 F.3d 118, 136–37; *Wisconsin*, 938 F.3d at 325–26.

¹¹⁶ The ozone design value at a particular monitoring site is the 3-year average of the annual 4th highest daily maximum 8-hour ozone concentration at that site.

¹¹⁷ As noted above, each model grid cell is 12 x 12 km.

¹¹⁸ The relative response factor represents the change in ozone at a given site. In order to calculate the RRF, EPA's modeling guidance recommends selecting the 10 highest ozone days in an ozone season at a given monitor in the base year, noting which of the grid cells surrounding the monitor experienced the highest ozone concentrations in the base year, and averaging those ten highest concentrations. The model is then run using the projected year emissions, in this case 2023, with all other model variables held constant. Ozone concentrations from the same ten days, in the same grid cells, are then averaged. The fractional change between the base year (2016 model run) averaged ozone concentrations and the future year (*e.g.*, 2023 model run) averaged ozone concentrations represents the relative response factor.

¹¹⁹ <https://www.mmm.ucar.edu/weather-research-and-forecasting-model>.

limited due to the presence of overwater meteorology. Thus, for our modeling EPA projected average and maximum design values at individual monitoring sites based on both the “3 x 3” approach as well as the alternative approach that eliminates overwater cells in the RRF calculation for near-coastal areas (*i.e.*, “no water” approach). The projected 2023, 2026, and 2032 design values using both the “3 x 3” and “no-water” approaches are provided in the docket for this proposed rule. For this proposed rule, the EPA is relying upon design values based on the “no water” approach for identifying nonattainment and maintenance receptors.¹²⁰

Consistent with the truncation and rounding procedures for the 8-hour ozone NAAQS, the projected design values are truncated to integers in units of ppb.¹²¹ Therefore, projected design values that are greater than or equal to 71 ppb are considered to be violating the 2015 ozone NAAQS. For those sites that are projected to be violating the

NAAQS based on the average design values in the future analytic years, the Agency examined the measured design values for 2020, which are the most recent official measured design values at the time of this proposal. As noted earlier, the Agency proposes to identify nonattainment receptors in this rulemaking as those sites that are violating the NAAQS based on current measured air quality and also have projected average design values of 71 ppb or greater. Maintenance-only receptors include both (1) those sites with projected average design values above the NAAQS that are currently measuring clean data and (2) those sites with projected average design values below the level of the NAAQS, but with projected maximum design values of 71 ppb or greater. In addition to the maintenance-only receptors, the 2021 ozone nonattainment receptors are also maintenance receptors because the maximum design values for each of these sites is always greater than or

equal to the average design value. The monitoring sites that the Agency projects to be nonattainment and maintenance receptors for the ozone NAAQS in the 2023 and 2026 base case are used for assessing the contribution of emissions in upwind states to downwind nonattainment and maintenance of ozone NAAQS as part of this proposal.

Table V.D–1 contains the 2016-centered¹²² base period average and maximum 8-hour ozone design values, the 2023 base case average and maximum design values and the 2020 design values for the sites that are projected to be nonattainment receptors in 2023. Table V.D–2 contains this same information for monitoring sites that are projected to be maintenance-only receptors in 2023. The design values for all monitoring sites in the U.S. are provided in the docket for this rule. Additional details on the approach for projecting average and maximum design values are provided in the AQM TSD.

TABLE V.D–1—AVERAGE AND MAXIMUM 2016-CENTERED AND 2023 BASE CASE 8-HOUR OZONE DESIGN VALUES AND 2020 DESIGN VALUES (ppb) AT PROJECTED NONATTAINMENT RECEPTORS *

Monitor ID	State	County	2016 centered average	2016 centered maximum	2023 average	2023 maximum	2020
060170010	CA	El Dorado	85.3	88	76.3	78.7	84
060170020	CA	El Dorado	82.0	84	74.3	76.2	80
060190007	CA	Fresno	87.0	89	80.4	82.2	80
060190011	CA	Fresno	90.0	91	82.9	83.8	84
060190242	CA	Fresno	84.3	86	79.5	81.1	79
060194001	CA	Fresno	90.3	92	82.8	84.4	81
060195001	CA	Fresno	91.0	94	83.7	86.4	84
060250005	CA	Imperial	76.7	77	76.3	76.6	78
060251003	CA	Imperial	76.0	76	75.4	75.4	68
060290007	CA	Kern	87.7	89	82.8	84.0	93
060290008	CA	Kern	83.0	85	79.1	81.0	85
060290011	CA	Kern	83.3	85	78.8	80.4	86
060290014	CA	Kern	86.0	88	81.3	83.2	85
060290232	CA	Kern	79.3	82	74.9	77.5	83
060292012	CA	Kern	89.3	90	84.1	84.7	85
060295002	CA	Kern	87.3	89	82.4	84.0	89
060296001	CA	Kern	80.7	81	77.1	77.4	82
060311004	CA	Kings	83.3	84	76.9	77.6	80
060370002	CA	Los Angeles	94.3	99	88.0	92.4	97
060370016	CA	Los Angeles	100.0	103	93.4	96.2	107
060371201	CA	Los Angeles	88.3	91	82.7	85.3	92
060371602	CA	Los Angeles	75.7	76	73.6	73.9	78
060371701	CA	Los Angeles	92.0	95	85.6	88.4	88
060372005	CA	Los Angeles	84.7	86	80.7	81.9	93
060376012	CA	Los Angeles	98.0	100	91.6	93.4	101
060379033	CA	Los Angeles	87.3	89	80.7	82.2	80
060390004	CA	Madera	80.3	83	75.7	78.3	76
060392010	CA	Madera	82.7	84	77.0	78.2	78
060430003	CA	Mariposa	76.0	79	74.2	77.1	79
060470003	CA	Merced	80.7	82	74.7	75.9	76
060570005	CA	Nevada	86.3	90	78.1	81.5	82

¹²⁰ Using design values from the “3 x 3” approach, the maintenance-only receptor at site 170317002 in Cook County, IL would become a nonattainment receptor because the average design value with the “3 x 3” approach is 71.1 ppb versus 70.1 ppb with the “no water” approach. In addition, the monitor at site 170971007 in Lake County, IL which was not projected to be a receptor using the

“no water” approach would be a maintenance-only receptor with the “3 x 3” approach because the maximum design value with the “no water” approach was 69.9 ppb versus a maximum design value of 71.2 ppb with the “3 x 3” approach. However, including this Lake County, Illinois site as a receptor would not affect which states are covered by this proposed rule.

¹²¹ 40 CFR part 50, Appendix P to Part 50— Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

¹²² 2016-centered averaged design values represent the average of the design values for 2016, 2017, and 2018. Similarly, the maximum 2016-centered design value is the highest measured design value from these three design value periods.

TABLE V.D-1—AVERAGE AND MAXIMUM 2016-CENTERED AND 2023 BASE CASE 8-HOUR OZONE DESIGN VALUES AND 2020 DESIGN VALUES (ppb) AT PROJECTED NONATTAINMENT RECEPTORS *—Continued

Monitor ID	State	County	2016 centered average	2016 centered maximum	2023 average	2023 maximum	2020
060592022	CA	Orange	77.7	78	72.5	72.8	82
060595001	CA	Orange	75.3	76	72.3	73.0	77
060610003	CA	Placer	85.0	88	77.1	79.8	N/A
060610004	CA	Placer	79.3	85	71.9	77.0	N/A
060610006	CA	Placer	80.0	81	72.8	73.7	72
060650008	CA	Riverside	76.5	79	71.0	73.3	N/A
060650012	CA	Riverside	95.3	98	85.9	88.3	99
060650016	CA	Riverside	79.0	80	72.0	72.9	78
060651016	CA	Riverside	99.7	101	89.8	90.9	99
060652002	CA	Riverside	82.7	85	76.4	78.5	84
060655001	CA	Riverside	88.7	91	80.5	82.6	88
060656001	CA	Riverside	92.3	93	83.5	84.1	94
060658001	CA	Riverside	96.7	98	89.5	90.7	96
060658005	CA	Riverside	95.0	98	87.9	90.7	98
060659001	CA	Riverside	88.7	91	80.8	82.9	87
060670002	CA	Sacramento	77.7	78	71.4	71.7	72
060670012	CA	Sacramento	82.3	83	74.8	75.4	N/A
060710001	CA	San Bernardino	79.0	80	74.5	75.4	81
060710005	CA	San Bernardino	110.3	112	100.3	101.8	109
060710012	CA	San Bernardino	95.0	98	87.3	90.1	90
060710306	CA	San Bernardino	84.0	86	76.8	78.6	83
060711004	CA	San Bernardino	105.7	109	97.2	100.2	106
060712002	CA	San Bernardino	97.7	99	90.1	91.3	102
060714001	CA	San Bernardino	90.3	91	82.6	83.3	87
060714003	CA	San Bernardino	104.0	107	95.2	98.0	114
060719002	CA	San Bernardino	87.3	89	80.1	81.6	86
060719004	CA	San Bernardino	108.7	111	99.5	101.6	110
060731006	CA	San Diego	83.0	84	76.9	77.9	79
060773005	CA	San Joaquin	77.3	79	71.3	72.8	70
060990005	CA	Stanislaus	81.0	82	75.4	76.3	79
060990006	CA	Stanislaus	83.7	84	77.5	77.8	80
061030004	CA	Tehama	79.7	81	72.3	73.4	74
061070006	CA	Tulare	84.7	86	79.1	80.3	83
061070009	CA	Tulare	89.0	89	82.6	82.6	88
061072002	CA	Tulare	82.7	85	75.5	77.6	83
061072010	CA	Tulare	84.0	86	77.0	78.8	80
061090005	CA	Tuolumne	80.7	83	75.6	77.8	77
080350004	CO	Douglas	77.3	78	71.7	72.3	81
080590006	CO	Jefferson	77.3	78	72.6	73.3	79
080590011	CO	Jefferson	79.3	80	73.8	74.4	80
080690011	CO	Larimer	75.7	77	71.3	72.6	75
090010017	CT	Fairfield	79.3	80	73.0	73.7	82
090013007	CT	Fairfield	82.0	83	74.2	75.1	80
090019003	CT	Fairfield	82.7	83	76.1	76.4	79
090099002	CT	New Haven	79.7	82	71.8	73.9	80
481671034	TX	Galveston	75.7	77	71.1	72.3	74
482010024	TX	Harris	79.3	81	75.2	76.8	79
482010055	TX	Harris	76.0	77	71.0	72.0	76
490110004	UT	Davis	75.7	78	72.9	75.1	77
490353006	UT	Salt Lake	76.3	78	73.6	75.3	74
490353013	UT	Salt Lake	76.5	77	74.4	74.9	73
550590019	WI	Kenosha	78.0	79	72.8	73.7	74
551010020	WI	Racine	76.0	78	71.3	73.2	73
551170006	WI	Sheboygan	80.0	81	73.6	74.5	75

* "N/A" is used to denote that there is no valid 2020 design value.

TABLE V.D-2—AVERAGE AND MAXIMUM 2016-CENTERED AND 2023 BASE CASE 8-HOUR OZONE DESIGN VALUES AND 2020 DESIGN VALUES (ppb) AT PROJECTED MAINTENANCE-ONLY RECEPTORS

Monitor ID	State	County	2016 centered average	2016 centered maximum	2023 average	2023 maximum	2020
040278011	AZ	Yuma	72.3	74	70.5	72.2	68
060070007	CA	Butte	76.7	79	68.9	71.0	73
060090001	CA	Calaveras	77.0	78	70.9	71.9	72
060371103	CA	Los Angeles	73.0	74	70.5	71.5	76
060430006	CA	Mariposa	75.0	76	70.1	71.0	79

TABLE V.D-2—AVERAGE AND MAXIMUM 2016-CENTERED AND 2023 BASE CASE 8-HOUR OZONE DESIGN VALUES AND 2020 DESIGN VALUES (ppb) AT PROJECTED MAINTENANCE-ONLY RECEPTORS—Continued

Monitor ID	State	County	2016 centered average	2016 centered maximum	2023 average	2023 maximum	2020
060675003	CA	Sacramento	77.3	79	70.2	71.7	70
060711234	CA	San Bernardino	72.3	76	70.6	74.2	76
061112002	CA	Ventura	77.3	78	70.9	71.6	77
170310001	IL	Cook	73.0	77	69.6	73.4	75
170310032	IL	Cook	72.3	75	69.8	72.4	74
170310076	IL	Cook	72.0	75	69.3	72.1	69
170314201	IL	Cook	73.3	77	69.9	73.4	77
170317002	IL	Cook	74.0	77	70.1	73.0	75
320030075	NV	Clark	75.0	76	70.0	71.0	74
350130021	NM	Dona Ana	72.7	74	70.9	72.2	78
350130022	NM	Dona Ana	71.3	74	69.5	72.1	74
420170012	PA	Bucks	79.3	81	70.7	72.2	74
480391004	TX	Brazoria	74.7	77	70.1	72.3	73
481210034	TX	Denton	78.0	80	70.4	72.2	72
481410037	TX	El Paso	71.3	73	69.6	71.3	76
482011034	TX	Harris	73.7	75	70.3	71.6	73
482011035	TX	Harris	71.3	75	68.0	71.6	70
490450004	UT	Tooele	73.5	74	70.8	71.3	69
490570002	UT	Weber	73.0	75	70.6	72.5	N/A
490571003	UT	Weber	73.0	74	70.5	71.5	71
550590025	WI	Kenosha	73.7	77	69.2	72.3	74

In total, in the 2023 base case there are a total of 111 receptors nationwide including 85 nonattainment receptors and 26 maintenance-only receptors.¹²³ Of the 85 nonattainment receptors in 2023, 75 remain nonattainment receptors while 8 are projected to become maintenance-only receptors and 2 are projected to be in attainment in 2026. Of the 26 maintenance-only receptors in 2023, 13 are projected to remain maintenance-only receptors and 13 are projected to be in attainment in 2026. The projected average and maximum design values in 2026 for all receptors are included in the AQM TSD.

¹²³ The EPA’s modeling also projects that three monitoring sites in the Uintah Basin (*i.e.*, monitor 490472003 in Uintah County, Utah and monitors 490130002 and 490137011 in Duchesne County, Utah) will have average design values above the NAAQS in 2023. However, as described in the AQM TSD, the Uintah Basin nonattainment area was designated as nonattainment for the 2015 ozone NAAQS not because of an ongoing problem with summertime ozone (as is usually the case in other parts of the country), but instead because it violates the ozone NAAQS in winter. The main causes of the Uintah Basin’s wintertime ozone are sources located at low elevations within the Basin, the Basin’s unique topography, and the influence of the wintertime meteorologic inversions that keep ozone and ozone precursors near the Basin floor and restrict air flow in the Basin. Because of the localized nature of the ozone problem at these sites the EPA has not identified these three monitors as receptors in Step 1 of this proposed rule.

E. Pollutant Transport From Upwind States

1. Air Quality Modeling To Quantify Upwind State Contributions

This section documents the procedures the EPA used to quantify the impact of emissions from specific upwind states on ozone design values in 2023 and 2026 for the identified downwind nonattainment and maintenance receptors. The EPA used CAMx photochemical source apportionment modeling to quantify the impact of emissions in specific upwind states on downwind nonattainment and maintenance receptors for 8-hour ozone. CAMx employs enhanced source apportionment techniques that track the formation and transport of ozone from specific emissions sources and calculates the contribution of sources and precursors to ozone for individual receptor locations. The benefit of the photochemical model source apportionment technique is that all modeled ozone at a given receptor location in the modeling domain is tracked back to specific sources of emissions and boundary conditions to fully characterize culpable sources.

The EPA performed nationwide, state-level ozone source apportionment modeling using the CAMx Ozone Source Apportionment Technology/ Anthropogenic Precursor Culpability Analysis (OSAT/APCA) technique¹²⁴ to

¹²⁴ As part of this technique, ozone formed from reactions between biogenic VOC and NO_x with

quantify the contribution of 2023 and 2026 base case NO_x and VOC emissions from all sources in each state to the corresponding projected ozone design values in 2023 and 2026 at air quality monitoring sites. The CAMx OSAT/APCA model run was performed for the period May 1 through September 30 using the projected future base case emissions and 2016 meteorology for this time period. As described earlier, in the source apportionment modeling the Agency tracked (*i.e.*, tagged) the amount of ozone formed from anthropogenic emissions in each state individually as well as the contributions from other sources (*e.g.*, natural emissions).

In the state-by-state source apportionment model run, the EPA tracked the ozone formed from each of the following tags:

- States—anthropogenic NO_x and VOC emissions from each state tracked individually (emissions from all anthropogenic sectors in a given state were combined);
- Biogenics—biogenic NO_x and VOC emissions domain-wide (*i.e.*, not by state);
- Boundary Concentrations—concentrations transported into the air quality modeling domain;
- Tribes—the emissions from those tribal lands for which the Agency has point source inventory data in the 2016v1 emissions modeling platform (EPA did not model the contributions from individual tribes);

anthropogenic NO_x and VOC are assigned to the anthropogenic emissions.

- Canada and Mexico—anthropogenic emissions from sources in the portions of Canada and Mexico included in the modeling domain (the EPA did not model the contributions from Canada and Mexico separately);
- Fires—combined emissions from wild and prescribed fires domain-wide (*i.e.*, not by state); and
- Offshore—combined emissions from offshore marine vessels and offshore drilling platforms.

The contribution modeling provided contributions to ozone from anthropogenic NO_x and VOC emissions in each state, individually. The contributions to ozone from chemical reactions between biogenic NO_x and VOC emissions were modeled and assigned to the “biogenic” category. The contributions from wildfire and prescribed fire NO_x and VOC emissions were modeled and assigned to the “fires” category. That is, the contributions from the “biogenic” and “fires” categories are not assigned to individual states nor are they included in the state contributions.

For the Step 2 analysis, the EPA calculated a contribution metric that considers the average contribution on the 10 highest ozone concentration days (*i.e.*, top 10 days) in 2023. This average contribution metric is intended to provide a reasonable representation of the contribution from individual states to projected future year design values, based on modeled transport patterns and other meteorological conditions generally associated with modeled high ozone concentrations at the receptor. An average contribution metric constructed in this manner is beneficial since the magnitude of the contributions is directly related to the magnitude of the design value at each site.

The analytic steps for calculating the contribution metric for the 2023 analytic year are as follows:

(1) Calculate the 8-hour average contribution from each source tag to each monitoring site for the time period of the 8-hour daily maximum modeled concentrations in 2023;

(2) Average the contributions and average the concentrations for the top 10

modeled ozone concentration days in 2023;

(3) Divide the average contribution by the corresponding average concentration to obtain a Relative Contribution Factor (RCF) for each monitoring site;

(4) Multiply the 2023 average design values by the 2023 RCF at each site to produce the average contribution metric values in 2023.¹²⁵

This same approach was applied to calculate contribution metric values at individual monitoring sites for 2026.¹²⁶

The resulting contributions from each tag to each monitoring site in the U.S. for 2023 and 2026 can be found in the docket for this proposed rule. Additional details on the source apportionment modeling and the procedures for calculating contributions can be found in the AQM TSD.

The largest contribution from each state that is the subject of this rule to 8-hour ozone nonattainment and maintenance receptors in downwind states in 2023 and 2026 are provided in Table V.E.1–1 and Table V.E.1–2, respectively.

TABLE V.E.1–1—LARGEST CONTRIBUTION TO DOWNWIND 8-HOUR OZONE NONATTAINMENT AND MAINTENANCE RECEPTORS IN 2023 (ppb)

Upwind state	Largest contribution to downwind nonattainment receptors	Largest contribution to downwind maintenance-only receptors
Alabama	0.88	0.71
Arizona	0.40	0.21
Arkansas	1.00	1.39
California	34.24	7.44
Colorado	0.07	0.20
Connecticut	0.01	0.21
Delaware	0.53	1.36
District of Columbia	0.04	0.07
Florida	0.16	0.15
Georgia	0.16	0.17
Idaho	0.55	0.57
Illinois	18.13	18.55
Indiana	6.60	7.10
Iowa	0.64	0.58
Kansas	0.42	0.59
Kentucky	0.83	0.88
Louisiana	5.39	7.03
Maine	0.01	0.01
Maryland	1.29	2.40
Massachusetts	0.30	0.30
Michigan	1.27	1.67
Minnesota	0.50	0.97
Mississippi	1.04	1.14
Missouri	1.08	1.66
Montana	0.08	0.11
Nebraska	0.26	0.36
Nevada	0.89	0.58
New Hampshire	0.10	0.06
New Jersey	8.85	5.79

¹²⁵ Note that a contribution metric value was not calculated for any receptor at which there were fewer than 5 days with model-predicted MDA8 ozone concentrations greater than or equal to 60

ppb in 2023. See the AQM TSD for information on those receptors that did not meet this criterion.

¹²⁶ In order to provide consistency in the contributions for 2023 and 2026, the contribution

metric values for 2026 are based on the 2026 daily contributions for the same days that were used to calculate the contribution metric values for 2023.

TABLE V.E.1-1—LARGEST CONTRIBUTION TO DOWNWIND 8-HOUR OZONE NONATTAINMENT AND MAINTENANCE RECEPTORS IN 2023 (ppb)—Continued

Upwind state	Largest contribution to downwind nonattainment receptors	Largest contribution to downwind maintenance-only receptors
New Mexico	0.30	0.13
New York	16.81	1.80
North Carolina	0.61	0.33
North Dakota	0.12	0.37
Ohio	1.94	1.88
Oklahoma	0.57	1.19
Oregon	1.10	1.31
Pennsylvania	6.90	0.51
Rhode Island	0.04	0.04
South Carolina	0.19	0.07
South Dakota	0.05	0.09
Tennessee	0.60	0.94
Texas	1.72	1.81
Utah	1.37	0.10
Vermont	0.02	0.02
Virginia	1.77	1.63
Washington	0.34	0.40
West Virginia	1.45	1.44
Wisconsin	0.19	2.61
Wyoming	0.81	0.19

TABLE V.E.1-2—LARGEST CONTRIBUTION TO DOWNWIND 8-HOUR OZONE NONATTAINMENT AND MAINTENANCE RECEPTORS IN 2026 (ppb)

Upwind state	Largest contribution to downwind nonattainment receptors	Largest contribution to downwind maintenance-only receptors
Alabama	0.17	0.48
Arizona	0.35	0.23
Arkansas	0.62	1.30
California	33.45	4.85
Colorado	0.05	0.08
Connecticut	0.01	0.01
Delaware	0.42	0.52
District of Columbia	0.03	0.04
Florida	0.10	0.09
Georgia	0.14	0.16
Idaho	0.48	0.48
Illinois	17.81	18.14
Indiana	6.43	6.99
Iowa	0.57	0.57
Kansas	0.40	0.57
Kentucky	0.80	0.80
Louisiana	4.25	6.97
Maine	0.01	0.01
Maryland	1.11	1.23
Massachusetts	0.29	0.14
Michigan	1.03	1.58
Minnesota	0.36	0.91
Mississippi	0.36	0.90
Missouri	0.98	1.53
Montana	0.07	0.08
Nebraska	0.11	0.23
Nevada	0.81	0.51
New Hampshire	0.09	0.02
New Jersey	8.54	5.47
New Mexico	0.29	0.23
New York	16.58	11.29
North Carolina	0.38	0.54
North Dakota	0.11	0.34
Ohio	1.78	1.83
Oklahoma	0.54	0.72

TABLE V.E.1-2—LARGEST CONTRIBUTION TO DOWNWIND 8-HOUR OZONE NONATTAINMENT AND MAINTENANCE RECEPTORS IN 2026 (ppb)—Continued

Upwind state	Largest contribution to downwind nonattainment receptors	Largest contribution to downwind maintenance-only receptors
Oregon	0.98	0.88
Pennsylvania	6.82	4.74
Rhode Island	0.04	0.01
South Carolina	0.15	0.17
South Dakota	0.03	0.06
Tennessee	0.25	0.34
Texas	1.61	1.70
Utah	0.95	1.18
Vermont	0.02	0.01
Virginia	1.14	1.68
Washington	0.31	0.28
West Virginia	1.23	1.35
Wisconsin	0.15	2.44
Wyoming	0.46	0.80

2. Application of Contribution Screening Threshold

The EPA evaluated the magnitude of the contributions from each upwind state to downwind nonattainment and maintenance receptors. In Step 2 of the interstate transport framework, the EPA uses an air quality screening threshold to identify upwind states that contribute to downwind ozone concentrations in amounts sufficient to “link” them to these to downwind nonattainment and maintenance receptors. The contributions from each state to each downwind nonattainment or maintenance receptor that were used for the Step 2 evaluation can be found in the AQM TSD.

The EPA proposes to apply an air quality screening threshold of 1 percent of the NAAQS, as it has used since the CSAPR rulemaking, including in the CSAPR Update, the Revised CSAPR Update, and numerous actions evaluating states’ transport SIP submittals. EPA continues to observe that the majority of nonattainment and maintenance receptors identified at Step 1 are impacted collectively by contributions of ozone transport from numerous upwind states. Therefore, application of a uniform screening threshold allows EPA to identify upwind states that share a responsibility under the interstate transport provision to eliminate their significant contribution.

The EPA recognizes that in 2018 it issued a memorandum indicating the potential for states to use a higher threshold at Step 2 in the development of their good neighbor SIP submissions where it could be technically justified. The August 2018 memorandum stated

that “it may be reasonable and appropriate” for states to rely on an alternative 1 ppb threshold at Step 2.¹²⁷ (The memorandum also indicated that any higher alternative threshold, such as 2 ppb, would likely not be appropriate.) Here, the EPA proposes to fulfill its role under CAA section 110(c) in promulgating FIPs to directly implement good neighbor requirements, and in this role, the EPA notes that it is authorized to exercise discretion in making policy determinations such as the appropriateness of a particular contribution threshold that would otherwise have been exercised by states. Further, as the EPA has explained in several notices proposing transport SIP disapprovals, *see, e.g.*, 87 FR 9498 and 87 FR 9510 (Feb. 22, 2022), its experience since the issuance of the August 2018 memorandum regarding use of alternative thresholds leads the Agency to now believe it may not be appropriate to continue to attempt to recognize alternative contribution thresholds at Step 2, either in the context of SIPs or FIPs.

EPA’s experience since 2018 is that allowing for alternative Step 2 thresholds may be impractical or otherwise inadvisable for a number of additional policy reasons. For a regional air pollutant such as ozone, consistency in requirements and expectations across all states is essential. In the context of a FIP proposal (as much as in the context of SIP actions), the Agency now believes using different thresholds at Step 2 with respect to the 2015 ozone NAAQS raises substantial policy consistency and practical

implementation concerns.¹²⁸ The availability of different thresholds at Step 2 has the potential to result in inconsistent application of good neighbor obligations. From the perspective of ensuring effective regional implementation of good neighbor obligations, the more important analysis is the evaluation of the emissions reductions needed, if any, to address a state’s significant contribution after consideration of a multifactor analysis at Step 3, including a detailed evaluation that considers air quality factors and cost. Where alternative thresholds for purposes of Step 2 may be “similar” in terms of capturing the relative amount of upwind contribution (as described in the August 2018 memorandum), nonetheless, use of an alternative threshold would allow certain states to avoid further evaluation of potential emissions controls while other states must proceed to a Step 3 analysis. This can create significant equity and consistency problems among states.

More importantly, in promulgating FIPs to address these obligations on a nationwide scale, national ozone transport policy is not well-served by allowing for less stringent thresholds at Step 2. The EPA recognized in the August 2018 memo that there was some similarity in the amount of total upwind contribution captured (on a nationwide basis) between 1 percent and 1 ppb. However, the EPA notes that while this

¹²⁸ We note that Congress has placed on the EPA a general obligation to ensure the requirements of the CAA are implemented consistently across states and regions. *See* CAA section 301(a)(2). Where the management and regulation of interstate pollution levels spanning many states is at stake, consistency in application of CAA requirements is paramount.

¹²⁷ August 2018 memo at 4.

may be true in some sense, that is hardly a compelling basis to move to a 1 ppb threshold. Indeed, the 1 ppb threshold has the disadvantage of losing a certain amount of total upwind contribution for further evaluation at Step 3 (e.g., roughly 7 percent of total upwind state contribution was lost according to the modeling underlying the August 2018 memo;¹²⁹ in EPA's updated modeling, the amount lost is roughly 5 percent). Considering the core statutory objective of ensuring elimination of *all* significant contribution to nonattainment or interference of the NAAQS in other states and the broad, regional nature of the collective contribution problem with respect to ozone, there does not appear to be a compelling policy imperative in moving to a 1 ppb threshold.

Consistency with past interstate transport actions such as CSAPR, and the CSAPR Update and Revised CSAPR Update rulemakings (which used a Step 2 threshold of 1 percent of the NAAQS for two less stringent ozone NAAQS) is also important. Continuing to use a 1 percent of NAAQS approach ensures that as the NAAQS are revised and made more stringent, an appropriate increase in stringency at Step 2 occurs, so as to ensure an appropriately larger amount of total upwind-state contribution is captured for purposes of fully addressing interstate transport for the more stringent NAAQS. EPA made this point when it originally promulgated CSAPR to address the 1997 ozone NAAQS. The Agency continues to consider this an important consideration for the more stringent 2015 ozone NAAQS. See 76 FR 48237–38.

Lastly, the Agency does not find it to be a good use of limited resources to attempt to further justify the use of alternative thresholds for certain states at Step 2 for purposes of the 2015 ozone NAAQS. Therefore, while EPA articulated a potential basis for recognizing the usefulness of alternative Step 2 thresholds (particularly a 1 ppb threshold) in the August 2018 memorandum, EPA's experience and further evaluation since the issuance of that memo has revealed substantial programmatic and policy difficulties in attempting to implement this approach. Depending on comment and further evaluation of this issue, the EPA may determine to rescind the 2018 memorandum in the future.

In light of the considerations above, EPA proposes using a contribution threshold of 0.70 ppb as the

quantification of 1 percent of the 2015 ozone NAAQS for purposes of Step 2.

a. States That Contribute Below the Screening Threshold

Based on EPA's modeling, the contributions from each of the following states to nonattainment or maintenance-only receptors in the 2023 analytic year are below the 1% of the NAAQS threshold: Arizona, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Idaho, Iowa, Kansas, Maine, Massachusetts, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Vermont, and Washington. The EPA has already approved many of these states' SIP submittals or is in the process of taking action to approve them. Because the contributions from these states to projected downwind air quality problems are below the screening threshold in the current modeling, these states are not within the scope of this proposed rule. Additionally, the EPA has made proposed or final determinations that two states outside the modeling domain for the air quality modeling analyzed in this proposed rulemaking—Hawaii¹³⁰ and Alaska¹³¹—do not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

a. States That Contribute at or Above the Screening Threshold

Based on the maximum downwind contributions in Table V.E.1–1, the Step 2 analysis identifies that the following 22 states contribute at or above the 0.70 ppb threshold to downwind nonattainment receptors in 2023: Alabama, Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Utah, Virginia, West Virginia, and Wyoming. Based on the maximum downwind contributions in Table V.E.1–1, the following 23 states contribute at or above the 0.70 ppb threshold to downwind maintenance-only receptors in 2023: Alabama, Arkansas, California, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Oregon, Tennessee, Texas, Virginia, West

Virginia, and Wisconsin. The levels of contribution between each of these linked upwind states and downwind nonattainment receptors and maintenance-only receptors are provided in the AQM TSD.

Among the linked states are several western states—California, Nevada, Oregon, Utah, and Wyoming. While the EPA has not previously included action on linked western states in its prior CSAPR rulemakings, the EPA has consistently applied the 4-step framework in evaluating good neighbor obligations from these states. On a case-by-case basis, the EPA has found in some instances with respect to the 2008 ozone NAAQS that a unique consideration has warranted approval of a linked western state's good neighbor SIP submittal without concluding that additional emissions reductions are required at Step 3 of the framework.¹³² The EPA has also explained in prior actions that its air quality modeling is reliable for assessing downwind air quality problems and ozone transport contributions from upwind states throughout the nationwide modeling domain.¹³³

In EPA's current analysis, the EPA finds that for one linked state—Oregon—the same considerations that led it to approve another state's SIP submission, Arizona's, for the 2008 ozone NAAQS apply to Oregon's circumstances for the 2015 ozone NAAQS. As explained in the following section, the EPA therefore proposes to affirm its prior approval of Oregon's good neighbor SIP submission for the 2015 ozone NAAQS. For the remaining western states included in this proposed rule, EPA's modeling supports a conclusion that these states are linked above the contribution threshold to identified ozone transport receptors in other states, and therefore, consistent with the treatment of all other states within the modeling domain, the EPA proposes to proceed to evaluate these states for a determination of “significant contribution” at Step 3.

In conclusion, as described above, states with contributions that equal or exceed 1 percent of the NAAQS to either nonattainment or maintenance receptors are identified as “linked” at Step 2 of the good neighbor framework and warrant further analysis for significant contribution to nonattainment or interference with

¹³⁰ The EPA proposed to approve Hawaii's 2015 ozone transport SIP on September 28, 2021. See 86 FR 53571.

¹³¹ The EPA approved Alaska's 2015 ozone transport SIP on December 18, 2019. See 84 FR 69331.

¹³² See interstate transport approval actions under the 2008 ozone NAAQS for Arizona, California, and Wyoming at 81 FR 36179 (June 6, 2016), 83 FR 65093 (December 19, 2018), and 84 FR 14270 (April 10, 2019), respectively.

¹³³ See 81 FR 71991 (October 19, 2016), 82 FR 9155 (February 3, 2017).

¹²⁹ See August 2018 memo, at 4.

maintenance under Step 3. The EPA proposes that the following 27 States are linked at Step 2 in 2023: Alabama, Arkansas, California, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming. In addition, the EPA proposes that the following 24 States are linked at Step 2 in 2026: Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming. Three states, Alabama, Delaware, and Tennessee, that were linked in 2023 are not linked in 2026 because the receptor(s) to which each state was linked in 2023 are projected to attain by 2026.

F. Treatment of Certain Receptors in California and Implications for Oregon's Good Neighbor Obligations for the 2015 Ozone NAAQS

The EPA previously approved Oregon's September 25, 2018 transport SIP submittal for the 2015 ozone NAAQS on May 17, 2019 (84 FR 22376), because in an earlier round of modeling Oregon was not projected to contribute above 1 percent of the NAAQS to any downwind receptors. In EPA's updated modeling, Oregon is linked above the 1 percent of NAAQS threshold to several monitoring sites in California that would generally meet EPA's definition of nonattainment or maintenance "receptors" at Step 1.¹³⁴ However, EPA's analysis of the nature of the air quality problem at these monitoring sites leads EPA to propose a determination that these monitoring sites should not be treated as receptors for purposes of determining interstate transport obligations of upwind states under CAA section 110(a)(2)(D)(i)(I). EPA reaches this conclusion at Step 1 of its four-step framework.

The EPA previously made a similar assessment of the nature of certain other monitoring sites in California in approving Arizona's 2008 ozone NAAQS transport SIP submittal.¹³⁵ There, the EPA noted that a "factor

[. . .] relevant to determining the nature of a projected receptor's interstate transport problem is the magnitude of ozone attributable to transport from all upwind states collectively contributing to the air quality problem."¹³⁶ The EPA observed that only one upwind state (Arizona) was linked above 1 percent of the 2008 ozone NAAQS to the two relevant monitoring sites in California, and the cumulative ozone contribution from all upwind states to those sites was 2.5 percent and 4.4 percent of the total ozone, respectively. The EPA determined the size of those cumulative upwind contributions was "negligible, particularly when compared to the relatively large contributions from upwind states in the East or in certain other areas of the West."¹³⁷ In that action, the EPA concluded the two California sites to which Arizona was linked should not be treated as receptors for the purposes of determining Good Neighbor obligations for the 2008 ozone NAAQS.¹³⁸

The EPA proposes to make a similar finding for the monitoring sites in California otherwise projected in its current modeling to be "receptors" for the 2015 ozone NAAQS and to which Oregon is linked. The highest percent of the total cumulative upwind ozone contribution to any of these sites is 2.8 percent.¹³⁹ This is lower than the largest transport contribution relative to total ozone at the California sites identified in EPA's approval of Arizona's 2008 ozone transport SIP (4.4 percent).¹⁴⁰ Further, as was the case for the sites in California analyzed in EPA's Arizona action, the identified sites in California each have only one upwind state contributing above 1 percent of the NAAQS to them (Oregon). These monitoring sites in California are overwhelmingly impacted by in-state emissions to a degree not comparable with any other identified nonattainment or maintenance-only receptors in the country.

The EPA proposes to find that these monitoring sites should not be considered receptors for the purpose of assessing 2015 ozone NAAQS interstate transport obligations. The EPA is not proposing a different contribution threshold at Step 2 for Western states or receptors, nor does the EPA reach its conclusion based on any evaluation at Step 3 of emissions reduction opportunities in Oregon.

As a consequence of this proposed finding, the EPA continues to find that ozone-precursor emissions from Oregon do not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any downwind state, because the total collective upwind state ozone contribution to the California monitoring sites is extremely low compared to the air quality problems typically addressed under the good neighbor provision. Therefore, the EPA is not proposing any change in this action to its prior approval of Oregon's SIP. The EPA is not proposing any new FIP requirements and is not proposing to require reductions from new or existing EGU or non-EGU sources in Oregon in this action. If, however, EPA were not to finalize this proposed approach, then EPA anticipates that it would apply the same control strategies in Oregon as applied in all other linked upwind states, as discussed in Sections VI and VII of this proposed rule. EPA requests public comment on its approach to characterizing the nature of the interstate transport problem at the California monitoring sites at issue and the consequent approach to assessing Oregon's good neighbor obligations.

VI. Quantifying Upwind-State NO_x Emissions Reduction Potential To Reduce Interstate Ozone Transport for the 2015 Ozone NAAQS

A. The Multi-Factor Test for Determining Significant Contribution

This section describes EPA's methodology at Step 3 of the 4-step framework for identifying upwind emissions that constitute "significant" contribution for the states subject to this proposed rule and focuses on the 26 states with FIP requirements identified in the sections above. Following the existing framework as applied in all of the prior CSAPR rulemakings, EPA's assessment of linked upwind state emissions is based primarily on analysis of several alternative levels of NO_x emissions control stringency applied uniformly across all of the linked states. The analysis includes assessment of non-EGU stationary sources in addition to EGU sources in the linked upwind states.

The EPA applies a multi-factor test—the same multi-factor test that was used in CSAPR, the CSAPR Update, and the Revised CSAPR Update¹⁴¹—to evaluate increasing levels of uniform NO_x control stringency. The multi-factor test, which is central to EPA's Step 3

¹³⁴ Monitors are listed in the AQM TSD included in the docket for this rulemaking. While EPA is providing information about cumulative upwind contribution to the California monitors, the Agency does not consider these monitors as ozone transport receptors in this proposal.

¹³⁵ 81 FR 15200 (March 22, 2016) (proposal); 81 FR 31513 (May 19, 2016) (final rule).

¹³⁶ 81 FR at 15203.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ See Air Quality Modeling TSD in the docket for this action.

¹⁴⁰ 81 FR at 15203; 81 FR 31513.

¹⁴¹ See CSAPR, Final Rule, 76 FR 48208 (August 8, 2011).

quantification of significant contribution, considers cost, available emissions reductions, downwind air quality impacts, and other factors to determine the appropriate level of uniform NO_x control stringency that would eliminate significant contribution to downwind nonattainment or maintenance receptors. The selection of a uniform level of NO_x emissions control stringency across all of the linked states, reflected as a representative cost per ton of emissions reduction (or a weighted average cost per ton in the case of EPA's non-EGU and EGU analysis for 2026 mitigation measures), also serves to apportion the reduction responsibility among collectively contributing upwind states. This approach to quantifying upwind state emission-reduction obligations using uniform cost was reviewed by the Supreme Court in *EME Homer City Generation*, which held that using such an approach to apportion emissions reduction responsibilities among upwind states that are collectively responsible for downwind air quality impacts "is an efficient and equitable solution to the allocation problem the Good Neighbor Provision requires the Agency to address." 572 U.S. at 519.

There are four stages in developing the multi-factor test: (1) Identify levels of uniform NO_x control stringency; (2) evaluate potential NO_x emissions reductions associated with each identified level of uniform control stringency; (3) assess air quality improvements at downwind receptors for each level of uniform control stringency; and (4) select a level of control stringency considering the identified cost, available NO_x emissions reductions, and downwind air quality impacts, while also ensuring that emissions reductions do not unnecessarily over-control relative to the contribution threshold or downwind air quality.

As mentioned in Section IV.A.2 of this proposed rule, commenters on previous ozone transport rules have suggested that the EPA should regulate VOCs as an ozone precursor. For this proposed rule, the EPA examined the results of the contribution modeling performed for this rule to identify the portion of the ozone contribution attributable to anthropogenic NO_x emissions versus VOC emissions from each linked upwind state to each downwind receptor. Of the total upwind-downwind linkages in 2023, the contributions from NO_x emissions comprise 80 percent or more of the total anthropogenic contribution at the vast majority of linkages (136 out of 140 total). Across all receptors, the

contribution from NO_x emissions ranges from 77 percent to 99 percent of the total anthropogenic contribution. This review of the portion of the ozone contribution attributable to anthropogenic NO_x emissions versus VOC emissions from each linked upwind state leads the Agency to conclude that the vast majority of the downwind air quality areas addressed by the proposed rule under are primarily NO_x-limited, rather than VOC-limited. Therefore, the EPA is proposing to determine that the regulation of VOCs as an ozone precursor is not necessary to eliminate significant contribution of ozone transport to downwind areas in this proposed rule. The remainder of this section focuses on EPA's strategy for reducing regional-scale transport of ozone by targeting NO_x emissions from stationary sources to achieve the most effective reductions of ozone transport over the geography of the affected downwind areas.

For both EGUs and non-EGUs, Section VI.B of this proposed rule describes the available NO_x emissions controls that the EPA evaluated for this proposed rule and their representative cost levels (in 2016\$). Section VI.C of this proposed rule discusses EPA's application of that information to assess emissions reduction potential of the identified control stringencies. Finally, Section VI.D of this proposed rule describes EPA's assessment of associated air quality impacts and EPA's subsequent identification of appropriate control stringencies considering the key relevant factors (cost, available emissions reductions, and downwind air quality impacts).

This multi-factor approach is consistent with EPA's approach in prior transport actions, such as CSAPR. In addition, as was evaluated in the CSAPR Update and Revised CSAPR Update, the EPA evaluated possible over-control by examining whether an upwind state is linked solely to downwind air quality problems that could have been resolved at a lesser threshold of control stringency and whether an upwind state could reduce its emissions below the 1 percent air quality contribution threshold at a lesser threshold of control stringency. This analysis is described in Section VI.D of this proposed rule.

Finally, while the EPA has evaluated potential emissions reductions from non-EGU sources in prior rules, this is the first action for which the EPA is proposing non-EGU emissions reductions within the context of its 4-step interstate transport framework. The EPA applies its multi-factor test to non-

EGUs and independently evaluates non-EGU industries in a consistent but parallel track to its Step 3 assessment for EGUs. This is consistent with the parallel assessment approach taken for EGUs and non-EGUs in the Revised CSAPR Update. Following the conclusions of the EGU and non-EGU multi-factor tests, the identified reductions for EGUs and non-EGUs are combined and collectively analyzed to assess their effects on downwind air quality and whether the rule achieves a full remedy to "significant contribution" while avoiding over-control.

In order to ensure that this rule implements a full remedy for the elimination of significant contribution from upwind states, the EPA has reviewed available information on all major industrial source sectors in the upwind states. This analysis leads the EPA to propose that both EGUs and certain large sources in several specific industrial categories should be evaluated for emissions control opportunities. As discussed in the sections that follow, the EPA proposes that for both EGUs and the selected non-EGU source categories, there are impactful emissions reduction opportunities available at reasonable cost-effectiveness thresholds. As in the Revised CSAPR Update, the EPA examines EGUs and non-EGUs in this section on consistent but distinct, parallel tracks due to differences stemming from the unique characteristics of the power sector compared to other industrial source categories. Since the NO_x SIP Call, EGUs have consistently been regulated under ozone transport rules. These units operate in a coordinated manner across a highly interconnected electrical grid. Their configuration and emissions control strategies are relatively homogenous, and their emissions levels and emissions control opportunities are generally very well understood due to longstanding monitoring and data-reporting requirements. Non-EGU sources, by contrast, are relatively heterogeneous, even within a single industrial category, and have far greater variation in existing emissions control requirements, emissions levels, and technologies to reduce emissions. In general, despite these differences, the information available for this proposal indicates that both EGUs and certain non-EGU categories have available cost-effective NO_x emissions reduction opportunities at relatively commensurate cost per ton levels, and these emissions reductions will make a meaningful improvement in air quality

at the downwind receptors. Section VI.B.2 of this proposed rule describes EPA's process for selecting specific Tier I and Tier II non-EGU source categories included in this proposed rulemaking.

The EPA notes that its Step 3 analysis does not assess emissions reduction opportunities from mobile sources. The EPA continues to believe that title II of the CAA provides the primary authority and process for reducing ozone-precursor pollutants from mobile sources. EPA's federal mobile source programs have delivered and are projected to continue to deliver substantial nationwide reductions in both VOCs and NO_x emissions; these reductions are factored into the Agency's assessment of air quality and contributions at Steps 1 and 2. Further, states are generally preempted from regulating new vehicles and engines with certain exceptions, and therefore a question exists regarding EPA's authority to address such emissions when regulating in place of the states under CAA section 110(c). *See generally* CAA sections 209, 177. *See also* 86 FR 23099. As noted earlier, the EPA accounted for mobile source emissions reductions resulting from other federally enforceable regulatory programs in the development of emissions inventories used to support analysis for this proposed rulemaking, and the EPA does not evaluate any mobile source control measures in its Step 3 evaluation in this proposal.¹⁴² For further discussion of EPA's existing and ongoing mobile source measures, *see* Section VI.B.4 of this proposed rule.

B. Identifying Control Stringency Levels

1. EGU NO_x Mitigation Strategies

In identifying levels of uniform control stringency for EGUs, the EPA assessed the same NO_x emissions controls that the Agency analyzed in the CSAPR Update and the Revised CSAPR Update, all of which are considered to be widely available in this sector: (1) Fully operating existing SCR, including both optimizing NO_x removal by existing operational SCRs and turning on and optimizing existing idled SCRs; (2) installing state-of-the-art NO_x

¹⁴² The EPA recognizes that mechanisms exist under title I of the CAA that allow for the regulation of the use and operation of mobile sources to reduce ozone-precursor emissions. These include motor vehicle inspection and maintenance (I/M) programs, gasoline vapor recovery, clean-fuel vehicle programs, transportation control programs, and vehicle miles traveled programs. *See, e.g.*, CAA sections 182(b)(3), 182(b)(4), 182(c)(3), 182(c)(4), 182(c)(5), 182(d)(1), 182(e)(3), and 182(e)(4). The EPA views these programs as most effective and appropriate in the context of the planning requirements applicable to designated nonattainment areas.

combustion controls; (3) fully operating existing SNCRs, including both optimizing NO_x removal by existing operational SNCRs and turning on and optimizing existing idled SNCRs; (4) installing new SNCRs; (5) installing new SCRs; and (6) generation shifting (*i.e.*, emission reductions anticipated to occur from generation shifting from higher to lower emitting units at each of these stringency levels). For the reasons explained in the EGU NO_x Mitigation Strategies Proposed Rule TSD included in the docket for this proposed rule, the EPA determined that for the regional, multi-state scale of this rulemaking, only EGU NO_x emissions controls 1, 3, and 6 are possible for the 2023 ozone season (fully operating existing SCRs and SNCRs, and associated generation shifting). The EPA finds that it is not possible to install state-of-the-art NO_x combustion controls by the 2023 ozone season on a regional scale for Group 3 states not covered under the Revised CSAPR Rule. The EPA also determined that state-of-the-art NO_x combustion controls at EGUs are available by the beginning of the 2024 ozone season. All cost values discussed below for EGUs are in 2016 dollars.

a. Optimizing Existing SCRs

Optimizing (*i.e.*, turning on idled or improving operation of partially operating) existing SCRs can substantially reduce EGU NO_x emissions quickly, using investments that have already been made in pollution control technologies. With the promulgation of the CSAPR Update and the Revised CSAPR Update, most operators in the covered states improved their SCR performance and have continued to maintain that level of improved operation. However, this optimized SCR performance was not universal and not always sustained. Between 2017 and 2020, as the CSAPR Update ozone-season NO_x allowance price declined, NO_x emissions rates at some SCR-controlled EGUs increased. For example, power sector data from 2019 revealed that, in some cases, operating units had SCR controls that had been idled or were operating partially, and therefore suggested that there remained emissions reduction potential through optimization.¹⁴³ The EPA determined that optimizing all of these remaining SCRs in the 12 linked states for the Revised CSAPR Update was a readily available approach for EGUs to reduce NO_x emissions. This

¹⁴³ *See* "Ozone Season Data 2018 vs. 2019" and "Coal-fired Characteristics and Controls" at <https://www.epa.gov/airmarkets/power-plant-data-highlights#OzoneSeason>.

emissions reduction measure is currently available at EGUs across the broader geography affected in this proposed rulemaking (including in states not previously affected by the Revised CSAPR Update). The EPA thus proposes that SCR optimization, of both idled and partially operating controls, is a viable mitigation strategy for the 2023 ozone season.

The EPA estimates a representative marginal cost of optimizing SCR controls to be approximately \$1,600 per ton, consistent with its estimation in the Revised CSAPR Update for this technology. EPA's EGU NO_x Mitigation Strategies Proposed Rule TSD for this rule describes a range of cost estimates for this technology noting that the costs are frequently lower than—and for the majority of EGUs, significantly lower than—this representative marginal cost. While the costs of optimizing existing, operational SCRs include only variable costs, the cost of optimizing SCR units that are currently idled considers both variable and fixed costs of returning the control into service. Variable and fixed costs include labor, maintenance and repair, parasitic load, and ammonia or urea for use as a NO_x reduction reagent in SCR systems. Depending on a unit's control operating status, the representative cost at the 90th percentile unit (among the relevant fleet of coal units with SCR covered in this rulemaking) ranges between \$900 and \$1,700 per ton. The EPA performed an in-depth cost assessment for all coal-fired units with SCRs and found that for the subset of SCRs that are already partially operating, the cost of optimizing is often much lower than \$1,600 per ton and is often under \$900 per ton. The EPA anticipates the vast majority of realized cost for compliance with this strategy to be better reflected by the \$900 per ton end of that range (reflecting the 90th percentile of EGUs optimizing SCRs that are already partially operating) because this circumstance is considerably more common than EGUs that have ceased operating their SCR. EPA's analysis of this emissions control is informed by the latest engineering modeling equations used in EPA's IPM platform. These cost and performance equations were recently updated in the summer of 2021. The description and development of the equations are documented in EGU NO_x Mitigation Strategies Proposed Rule TSD and accompanying documents.¹⁴⁴ They are also

¹⁴⁴ The CSAPR Update estimated \$1,400 per ton as a representative cost of turning on idled SCR controls. EPA used the same costing methodology

implemented in an interactive spreadsheet tool called the Retrofit Cost Analyzer and applied to all units in the fleet. These materials are available in the docket for this proposal.

The EPA is using the same methodology to identify SCR performance as it did in the Revised CSAPR Update. To estimate EGU NO_x reduction potential from optimizing, the EPA considers the difference between the non-optimized NO_x emissions rates and an achievable operating and optimized SCR NO_x emissions rate. To determine this rate, EPA evaluated nationwide coal-fired EGU NO_x ozone season emissions data from 2009 through 2019 and calculated an average NO_x ozone season emissions rate across the fleet of coal-fired EGUs with SCR for each of these eleven years. The EPA found it prudent to not consider the lowest or second-lowest ozone season NO_x emissions rates, which may reflect SCR systems that have all new components (*e.g.*, new layers of catalyst). Data from these systems are potentially not representative of ongoing achievable NO_x emissions rates considering broken-in components and routine maintenance schedules. To identify the potential reductions from SCR optimization in this proposed rule, the EPA followed the same methodology as the Revised CSAPR Update. Considering the emissions data over the full time period from 2009–2019 data results in a third-best rate of 0.079 pounds NO_x per million British thermal units (lb/mmBtu).¹⁴⁵ Therefore, consistent with the Revised CSAPR Update, where EPA identified 0.08 lb/mmBtu as a reasonable level of performance for units with optimized SCR, the EPA proposes a rate of 0.08 lb/mmBtu as the optimized rate for this rule. The EPA notes that half of the SCR-controlled EGUs achieved a NO_x emissions rate of 0.064 lbs/mmBtu or less over their third-best entire ozone season. Moreover, for the SCR-controlled coal units that the EPA

while updating for input cost increases (*e.g.*, urea reagent) to arrive at \$1,600 per ton in the final Revised CSAPR Update (while also updating from 2011 dollars to 2016 dollars).

¹⁴⁵ The EPA notes that updating the inventory of units to reflect recent retirements and most recent year data (*e.g.*, 2009–2021) would provide a lower value of 0.071 lb/mmBtu. This value is lower than the 0.08 pounds per million British thermal units (lb/mmBtu) assessed in the Revised CSAPR Update as it reflects 2020 data and also excludes the SCR performance of since retired coal units with SCRs. However, 2020 was an outlier year (related to pandemic impacts on the electric grid). Additionally, a unit's retirement does not obviate the usefulness of its data for assessing technology performance. Consequently, EPA is proposing the same value of 0.08 lb/mmBtu identified at the time of the final Revised CSAPR Update Rule.

identified as having a 2021 emissions rate greater than 0.08 lb/mmBtu, the EPA verified that in prior years, the majority (more than 90 percent) of these same units had demonstrated and achieved a NO_x emissions rate of 0.08 lb/mmBtu or less on a seasonal or monthly basis. This further supports EPA's determination that 0.08 lb/mmBtu reflects a reasonable emissions rate for representing SCR optimization at coal steam units in identifying uniform control stringency. This emissions rate assumption of 0.08 lb/mmBtu reflects what those units would achieve on average when optimized, recognizing that individual units may achieve lower or higher rates based on unit-specific configuration and dispatch patterns. Units historically performing at, or better, than this rate of 0.08 lb/mmBtu are assumed to continue to operate at that prior performance level.

Given the magnitude and duration of the air quality problems addressed by this rulemaking, the EPA also applied the same methodology to identify a reasonable level of performance for optimizing existing SCRs at oil- and gas-fired steam units and simple cycle units (for which EPA determined that a 0.03 lb/mmBtu emissions rate reflected SCR optimization) as well as at combined-cycle units (for which the EPA determined that a 0.012 lb/mmBtu emissions rate reflected SCR optimization).

The EPA evaluated the feasibility of optimizing idled SCRs for the 2023 ozone season. Based on industry past practice, the EPA determined that idled controls can be restored to operation quickly (*i.e.*, in less than 2 months). This timeframe is informed by many electric utilities' previous long-standing practice of utilizing SCRs to reduce EGU NO_x emissions during the ozone season while putting the systems into protective lay-up during the non-ozone season months. For example, this was the long-standing practice of many EGUs that used SCR systems for compliance with the NO_x Budget Trading Program. It was quite typical for SCRs to be turned off following the September 30 end of the ozone season control period. These controls would then be put into protective lay-up for several months of non-use before being returned to operation by May 1 of the following ozone season.¹⁴⁶ Therefore,

¹⁴⁶ In the 22-state CSAPR Update region, 2005 EGU NO_x emissions data suggest that 125 EGUs operated SCR systems in the summer ozone season while idling these controls for the remaining 7 non-ozone season months of the year. Units with SCR were identified as those with 2005 ozone season average NO_x rates that were less than 0.12 lbs/mmBtu and 2005 average non-ozone season NO_x

the EPA believes that optimization of existing SCRs is possible for the portion of the 2023 ozone season covered under this proposed rule.

The vast majority of SCR-controlled units (nationwide and in the 25 linked states for which EPA is issuing a FIP for EGUs) are already partially operating these controls during the ozone season based on reported 2021 emissions rates. Existing SCRs operating at partial capacity still provide functioning, maintained systems that may only require an increased chemical reagent feed rate (*i.e.*, ammonia or urea) up to their design potential and catalyst maintenance for mitigating NO_x emissions; such units may require increased frequency or quantity of deliveries, which can be accomplished within a few weeks. In many cases, EGUs with SCR have historically achieved more efficient NO_x removal rates than their current performance and can therefore simply revert to earlier operation and maintenance plans that achieved demonstrably better SCR performance.

In the 12 states subject to this control stringency in the Revised CSAPR Update, the EPA observed significant immediate-term improvements in SCR performance in the first ozone season following finalization of that rule, as evidenced in particular by the sharp drop in emissions rate at Miami Fort unit 7 (*see* EGU NO_x Mitigation Strategies Proposed Rule TSD). Such empirical data further illustrates the viability of this mitigation strategy for the 2023 control period in response to this rule.

b. Installing State-of-the-Art NO_x Combustion Controls

The EPA estimates that the representative cost of installing state-of-the-art combustion controls is comparable to, if not notably less than, the estimated cost of optimizing existing SCR (represented by \$1,600 per ton). State-of-the-art combustion controls such as low-NO_x burners (LNB) and over-fire air (OFA) can be installed or updated quickly and can substantially reduce EGU NO_x emissions. Nationwide, approximately 99 percent of coal-fired EGU capacity greater than 25 MW is equipped with some form of combustion control; however, the control configuration or corresponding emissions rates at a small portion of those units (including units in those states covered in this action) indicate they do not currently have state-of-the-

emissions rates that exceeded 0.12 lbs/mmBtu and where the average non-ozone season NO_x rate was more than double the ozone season rate.

art combustion control technology. As described in the Revised CSAPR Update, the Agency updated its NO_x emissions rates for upgrading existing combustion controls to state-of-the-art combustion control. The EPA is maintaining its determination that NO_x emissions rates of 0.146 to 0.199 lbs/mmBtu can be achieved on average depending on the unit's boiler configuration,¹⁴⁷ and, once installed, reduce NO_x emissions at all times of EGU operation.

These assumptions are consistent with the Revised CSAPR Update and they are further discussed in the EGU NO_x Mitigation Strategies Proposed Rule TSD. In particular, the EPA proposes to apply the 0.199 lb/mmBtu emissions rate assumption for all unit types, consistent with its determination in the Revised CSAPR Update. The average emissions rate assumption derived from EPA's analysis would be 0.199 lb/mmBtu for combustion controls on dry bottom wall fired units and 0.146 lb/mmBtu for tangentially fired units. However, stakeholders have provided detailed analysis of how other unit considerations, such as coal rank, can result in large deviations from what has been historically demonstrated with this combustion control technology. Based on this and EPA's review of historical performance data for tangentially-fired units by coal rank with state-of-the-art combustion controls, the EPA determined in the final Revised CSAPR Update that it was appropriate to use the 0.199 lb/mmBtu rate for both tangentially and wall-fired units when estimating reduction potential for units with combustion control upgrade potential.

The EPA proposes to continue that approach in this action. Many of the likely impacted units burn bituminous coal, and the 0.146 lb/mmBtu nationwide average for tangentially-fired (inclusive of subbituminous units) appears to be below the demonstrated emissions rate of state-of-the-art combustion controls for bituminous coal units of this boiler type. Therefore, EPA's assumption of 0.199 lb/mmBtu for combustion controls is robust to current and future coal choice at a unit.

In promulgating CSAPR, the EPA examined the feasibility of installing combustion controls, and found that industry had demonstrated ability to install state-of-the-art LNB controls on a large unit (800 MW) in under six months when including the pre-installation phases (design, order

placement, fabrication, and delivery).¹⁴⁸ In prior rules, the EPA has documented its own assessment of combustion control timing installation as well as evaluated comments it received regarding installation of combustion controls from the Institute of Clean Air Companies.¹⁴⁹ Those comments provided information on the equipment and typical installation time frame for new combustion controls, accounting for all steps. Commenters noted that it generally takes between 6–8 months on a typical boiler—covering the time through bid evaluation through start-up of the technology. The deployment schedule is repeated here as:

- 4–8 weeks—bid evaluation and negotiation
- 4–6 weeks—engineering and completion of engineering drawings
- 2 weeks—drawing review and approval from user
- 10–12 weeks—fabrication of equipment and shipping to end user site
- 2–3 weeks—installation at end user site
- 1 week—commissioning and start-up of technology

Given the above timeframe of approximately 6 to 8 months to complete combustion control installation in the region, the EPA is proposing to determine that installation of state-of-the-art combustion controls is a readily available approach for EGUs to reduce NO_x emissions by the start of the 2024 ozone season. More details on these analyses can be found in the EGU NO_x Mitigation Strategies Proposed Rule TSD.

The cost of installing state-of-the-art combustion controls per ton of NO_x reduced is dependent on the combustion control type and unit type. The EPA estimates the cost per ton of state-of-the-art combustion controls to be \$400 per ton to \$1,200 per ton of NO_x removed using a representative capacity factor of 85 percent. This cost fits well within EPA's representative cost threshold observed for SCR optimization and combustion controls (of \$1,600 per ton) which would accommodate combustion control upgrade even under scenarios where a lower capacity factor is assumed. See the EGU NO_x Mitigation Strategies

¹⁴⁸ The EPA finds that, generally, the installation phase of state-of-the-art combustion control upgrades—on a single-unit basis—can be as little as 4 weeks to install with a scheduled outage (not including the pre-installation phases such as permitting, design, order, fabrication, and delivery) and as little as 6 months considering all implementation phases.

¹⁴⁹ EPA-HQ-OAR-2015-0500-0093.

Proposed Rule TSD for additional details.

c. Optimizing Already Operating SNCRs or Turning on Idled Existing SNCRs

Optimizing already operating SNCRs or turning on idled existing SNCRs can also reduce EGU NO_x emissions quickly, using investments in pollution control technologies that have already been made. Compared to no post-combustion controls on a unit, SNCRs can achieve a 25 percent reduction on average in EGU NO_x emissions (with sufficient reagent). They are less capital intensive but less efficient at NO_x removal than SCR. These controls are in use to some degree across the U.S. power sector. In the 25 linked states identified in this proposed rule with identified EGU reductions in their proposed FIP, approximately 11 percent of coal-fired EGU capacity is equipped with SNCR.¹⁵⁰ Recent power sector data suggest that, in some cases, SNCR controls have been operating less in 2021 relative to performance in prior years.

The EPA determined that optimizing already operating SNCRs or turning on idled SNCRs is an available approach for EGUs to reduce NO_x emissions, has similar implementation timing to restarting idled SCR controls (less than 2 months for a given unit), and therefore could be implemented in time for the 2023 ozone season. The EPA is proposing implementation of this emissions control technology beginning in the 2023 ozone season.

Using an updated data assessment using the Retrofit Cost Analyzer described in the EGU NO_x Mitigation Strategies Proposed TSD, the EPA estimates a representative cost of optimizing SNCR ranging from approximately \$1,800 per ton (for partially operating SNCRs) to \$3,900 per ton (for idled SNCRs). For existing SNCRs that have been idled, unit operators may need to restart payment of some fixed and variable operating costs including labor, maintenance and repair, parasitic load, and ammonia or urea. The EPA determined that the majority of units with existing SNCR optimization potential were already partially operating their controls. Therefore, the EPA proposes a representative cost of \$1,800 per ton for SNCR optimization as this value best reflects the circumstances of the majority of the affected EGUs with SNCR.

¹⁵⁰ <https://www.epa.gov/airmarkets/national-electric-energy-data-system-needs-v6>.

¹⁴⁷ Details of EPA's assessment of state-of-the-art NO_x combustion controls are provided in the EGU NO_x Mitigation Strategies Proposed Rule TSD.

d. Installing New SNCRs

Like existing SNCRs, new SNCR retrofit is also available to power plants and can achieve a 25% NO_x reduction on average. The EPA evaluated potential emissions reductions and associated costs from retrofitting EGUs with new SNCR post-combustion controls at steam units lacking such controls. New SNCR technology provides owners with a relatively less capital-intensive option for reducing NO_x emissions compared to new SCR technology, albeit at the expense of higher operating costs on a per-ton basis and less total emissions reduction potential. SNCR is more widely observed on relatively smaller coal units given its low capital/variable cost ratio. The average capacity of a coal unit with SNCR is half the size of the average capacity of coal unit with SCR.¹⁵¹ Given these observations, the EPA identifies this technology as an emissions reduction measure for coal units less than 100 MW lacking post-combustion NO_x control technology. As described in the EGU NO_x Mitigation Strategies Proposed Rule TSD, the EPA estimated that \$6,700 per ton reflects a representative SNCR retrofit cost level for a majority of these units.

SNCR installations generally have shorter project installation timeframes relative to other post-combustion controls. The time for engineering review, contract award, fabrication, delivery, and hookup is as little as 16 months including pre-contract award steps for an individual power plant installing controls on more than one boiler. This timeframe would mean the control would be available for the start of the 2024 or 2025 ozone season (*i.e.*, calculating 16 months from when this proposal is finalized). However, SNCR retrofits have less pollution reduction potential than alternative post-combustion controls such as SCRs. The EPA is not identifying SNCR technology as a strategy for larger steam units due to this lower removal efficiency and the empirical evidence of existing sources preferring the more efficient SCRs. Even for those smaller units less than 100 MWs identified as potential candidates for this technology, the EPA does not want to preclude those units from pursuing more advanced pollution controls. Therefore, the EPA also considers the point in time when all types of post-combustion control installation could be achieved—*i.e.*, by the 2026 ozone season. SNCR installation share similar implementation steps with and also

need to account for the same regional factors as SCR installations.¹⁵² Therefore, while the EPA is determining that at least 16 months would be needed to complete all necessary steps of SNCR development and installation at the EGUs not currently equipped with SNCRs in the 25 states linked to downwind receptors in this proposed rule, the EPA notes that the Agency evaluated SNCR as a post-combustion control technology collectively with SCR and estimated installation timing considerations of 36 months. EPA believes its proposed collective timing considerations for post-combustion control retrofit (SNCR and SCR) are practicable given that the preferable capital-intensive investment retrofit decision would be highly unit-specific and subject to a unit's compliance strategy choices with respect to multiple regulatory requirements.

Nonetheless, the EPA is requesting comment on whether post-combustion control timing assumptions (SCR and SNCR) should be decoupled, which would result in the EPA using the 16-month time frame specific to SNCR installation to estimate the first year in which these reductions are available. The EPA is only identifying this technology for units less than 100 MW (a size at which units rarely implement SCR retrofit technology). In effect, decoupling these timing assumptions would move the reductions associated with this control stringency from beginning in the 2026 ozone season to beginning in the 2024 or 2025 ozone season (depending on when this proposal is finalized). This would impact approximately 1,000 tons of identified reduction potential related to SNCR retrofit.

e. Installing New SCRs

Selective Catalytic Reduction (SCR) controls already exist on approximately 60% of the coal fleet in the linked states that would be subject to a FIP in this proposed rulemaking. Nearly every pulverized coal unit larger than 100 MW built in the last 30 years has installed this control, which is generally required for Best Available Control Technology

(BACT) purposes. Other than circulating fluidized bed coal units which can achieve a comparably low emissions rate without this technology, the EPA identifies this emissions reduction measure for coal steam units greater than or equal to 100 MW. SCR is widely available for existing coal units of this size and can provide significant emissions reduction potential, with removal efficiencies of up to 90 percent. The EPA limited its consideration of SCR technology to steam units greater than or equal to 100 MW. The costs for retrofitting a plant smaller than 100 MW with SCR increase rapidly due to a lack of economy of scale.¹⁵³

The amount of time needed to retrofit an EGU with new SCR extends beyond the 2023 ozone season. The EPA proposes that a strategy of retrofitting new SCR on a fleetwide, regional scale is available by, but no earlier than, the 2026 ozone season. Similar to the SNCR retrofits discussed above, the EPA evaluated potential emissions reductions and associated costs from this control technology, as well as the impacts and need for this emissions control strategy, at the earliest point in time when their installation could be achieved. In the past, the EPA has found the amount of time to retrofit a single EGU with new SCR, depending on the regulatory program under which such control may be required, may vary between approximately 2 and 4 years depending on site-specific engineering considerations and on the number of installations being considered. This includes steps for engineering review, construction permit, operating permit, and control technology installation (including fabrication, pre hookup, control hookup, and testing). EPA's assessment of installation procedures suggests as little as 21 months may be needed for a single SCR at an individual plant and 36 months at a single plant with multiple boilers. EPA's assessment of units with SCR retrofit potential indicate the majority fall into this first classification, *i.e.*, a single SCR at a power plant. Given that some of the assumed SCR retrofit potential occurs at plants with multiple units identified with retrofit potential, and given the total volume of SCR retrofit capacity being implemented across the region, The EPA is proposing 36 months as an appropriate time frame to accommodate both instances as well as scheduling necessities attributable to the regional-scale nature of the program.

¹⁵² A month-by-month evaluation of SNCR installation is discussed in EPA's NO_x Mitigation Strategies Proposed Rule TSD and in EPA's "Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies". The analysis in this exhibit estimates the installation period from contract award as within a 10–13-month timeframe. The exhibit also indicates a 16-month timeframe from start to finish, inclusive of pre-contract award steps of the engineering assessment of technologies and bid request development. The timeframe cited for installation of SNCR at an individual source in this action is consistent with this more complete timeframe estimated by the analysis in the exhibit.

¹⁵¹ See EGU NO_x Mitigation Strategies Proposed Rule TSD for additional discussion.

¹⁵³ IPM Model-Updates to Cost and Performance for APC Technologies. SCR Cost Development Methodology for Coal-fired Boilers. February 2022.

Further, the EPA notes that it has previously determined in the context of ozone transport that regional scale implementation of SCRs at numerous EGUs is achievable in 36 months. *See* 63 FR 57356, 57447–50 (October, 27, 1998). The EPA has at times also found up to 39–48 months to be an appropriate installation timeframe for regionwide actions when the EPA is evaluating multiple installations at multiple locations.¹⁵⁴ However, as discussed in greater detail in Section VII.A in this proposed rule, the EPA now recognizes that the *Wisconsin* decision invalidated the standard under which the EPA had been evaluating appropriate compliance timeframes for purposes of assessing interstate transport under the good neighbor provision when the Agency had concluded a 39–48 month timeframe to install SCR was appropriate.

The Agency examined the cost for retrofitting a coal unit with new SCR technology, which typically attains controlled NO_x rates of 0.05 lbs/mmBtu or less. These updates are further discussed in the EGU NO_x Mitigation Strategies Proposed Rule TSD.¹⁵⁵ Based on the characteristics of coal units of 100 MW or greater capacity that do not have post-combustion NO_x control technology, the EPA estimated a weighted-average representative SCR cost of \$11,000 per ton.¹⁵⁶

The 0.05 lb/mmBtu emission rate performance assumption for new SCR retrofits is supported by historical data and third party independent review by pollution control engineering and consulting firms. The EPA first examined unit-level emission rate data for coal-fired units that had a relatively recent SCR installation (within the last 10 years). These SCR retrofits reflect the most recent vintage of the pollution control technology applied to the power sector and are representative of new SCR retrofit capability. Although regulatory requirements or economic

incentives were not necessarily in place during this time period for these SCRs to operate at their full potential, the EPA found that half of these units had still demonstrated a seasonal emission rate of 0.05 lb/mmBtu or lower and 78 percent had demonstrated this rate on a monthly basis. The best performing 10 percent of these SCRs were demonstrating seasonal emission rates of 0.036 lb/mmBtu during this time.

While the EPA identified the 0.05 lb/mmBtu performance assumption consistent with historical data, these performance levels are also informed and consistent with the Agency's IPM modeling assumptions used for more than a decade. These modeling assumptions are based on input from leading engineering and pollution control consulting entities. Most recently, these data assumptions were affirmed and updated in the summer of 2021 and included in the docket for this rulemaking. The EPA relies on a global firm providing engineering, construction management, and consulting services for power and energy with expertise in grid modernization, renewable energy, energy storage, nuclear power, and fossil fuels. Their familiarity with state-of-the-art pollution controls at power plants derives from experience providing comprehensive project services—from consulting, design, and implementation to construction management, commissioning, and operations/maintenance. This review and update supported the 0.05 lb/mmBtu performance assumption as a representative emission rate for new SCR across coal types.

The EPA performed an assessment for oil/gas steam units in which it evaluated the nationwide performance of those units with SCR technology. For these units, the EPA tabulated EGU NO_x ozone season emissions data from 2009 through 2021 and calculated an average NO_x ozone season emissions rate across the fleet of oil- and gas-fired EGUs with SCR for each of these years. The EPA identified the third lowest year which yielded an SCR performance rate of 0.03 lb/mmBtu as representative of performance for this retrofit technology applied to this type of EGU. Next, the EPA evaluated the emissions and operational characteristics for the existing oil/gas steam fleet lacking SCR technology. EPA's analysis indicated that the majority of reduction potential (approximately 76 percent) from these units occurred at units greater than or equal to 100 MW and that were emitting more than 150 tons per ozone season (*i.e.*, approximately 1 ton per day). Moreover, the cost of reductions for

units falling below these criteria increased significantly. Therefore, the EPA identified the portion of the oil/gas steam fleet meeting this criteria as representative of the SCR retrofit reduction potential.¹⁵⁷ For this segment of the oil/gas steam units lacking post-combustion NO_x control technology, the EPA estimated a weighted-average representative SCR cost of \$7,700 per ton.

f. Generation Shifting

Finally, EPA evaluates emissions reduction potential from generation shifting across the representative dollar per ton levels estimated for the emissions controls considered above. As the cost of emitting NO_x increases, it becomes increasingly cost-effective for units with lower NO_x rates to increase generation, while units with higher NO_x rates reduce generation. Because the cost of generation is unit-specific, this generation shifting occurs incrementally on a continuum. Consequently, there is more generation shifting at higher cost NO_x-control levels.

It is reasonable for the EPA to quantify and include the emissions reduction potential from generation shifting at cost levels that are representative of the emissions control technologies evaluated in the multi-factor analysis, because all EGUs that would be regulated by this proposed rule participate in highly coordinated, interconnected systems where generation shifting will inevitably occur in response to pollution control requirements. If the EPA did not account for such emissions reduction potential in its analysis at Step 3, seeking emissions reductions from pollution control measures at higher-NO_x-emitting EGUs would still incentivize generation shifting toward lower-NO_x-emitting EGUs when sources comply under the remedy mechanism established in Step 4, and the corresponding reductions in emissions achieved through such generation shifting would potentially substitute for some of the emissions reductions intended through control operation and installation, potentially lessening the implementation of those mitigation strategies. Generation shifting treatment and results are discussed in greater detail in the EGU NO_x Mitigation Strategies Proposed TSD and the Ozone Transport Policy Analysis Proposed Rule TSD.

¹⁵⁷ The EPA used a 3 year average of 2019–2021 reported ozone season emissions to derive a tons per ozone season value representative for each covered oil/gas steam unit.

¹⁵⁴ *See, e.g.*, CSAPR Close-Out, 83 FR 65878, 65895 (December 21, 2018). *See also* Final Report: Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies, EPA-600/R-02/073 (Oct. 2002), available at <https://nepis.epa.gov/Adobe/PDF/P1001G0O.pdf>.

¹⁵⁵ As noted in that TSD, approximately half of the recent SCR retrofits (*i.e.*, installed in the last 10 years) have demonstrated an emission rate across the ozone season below 0.05 lb/mmBtu, even absent a requirement or strong incentive to operate at that level in many cases.

¹⁵⁶ This cost estimate is representative of coal units lacking any post-combustion control. A subset of units within the universe of coal sources with SCR retrofit potential, but that have an existing SNCR technology in place would have a weighted average cost that falls above this level, but still cost effective. *See* the EGU NO_x Mitigation Strategies Proposed Rule TSD for more discussion.

The EPA notes that its treatment of generation shifting here is consistent with the prior CSAPR rulemakings and is grounded on the same statutory authority. *See, e.g.*, 76 FR 48208, 48280 (August 8, 2011). As the EPA explained in the CSAPR Update:¹⁵⁸

The good neighbor provision requires state and federal plans implementing its requirements to “prohibit[] . . . any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will” significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state. CAA section 110(a)(2)(D)(i)(I) (emphasis added). . . . [T]he statute does not limit the EPA’s authority under the good neighbor provision to basing regulation only to control strategies for individual sources. The statute authorizes the state or EPA in promulgating a plan to prohibit emissions from “any source or other type of emissions activity within the State” that contributes (as determined by EPA) to the interstate transport problem with respect to a particular NAAQS. This broad statutory language shows that Congress was directing the states and the EPA to address a wide range of entities and activities that may be responsible for downwind emissions. However, this provision is silent as to the type of emissions reduction measures that the states and the EPA may consider in establishing emissions reduction requirements, and it does not limit those measures to individual source controls. . . . The EPA reasonably interprets this provision to authorize consideration of a wide range of measures to reduce emissions from sources, which is consistent with the broad scope of this provision, as noted immediately above.

81 FR 74545.¹⁵⁹ The EPA continued to apply this same understanding in the Revised CSAPR Update. *See* 86 FR 23054, 23095–97 (April 30, 2021); *see also* 85 FR 68964, 68992–93 (October 30, 2020).

The EPA requests comment on the suite of mitigation technologies for EGUs described earlier and assessed in the determination of significant contribution. The EPA requests comment on the assumed performance or emissions rate of the technology, the representative cost, and the timing for

installation.¹⁶⁰ Additionally, the EPA requests comment on whether other EGU ozone-season NO_x Mitigation technologies should be required to eliminate significant contribution. For instance, the EGU NO_x Mitigation Strategies Proposed Rule TSD discusses certain mitigation technologies that have been applied to “peaking” units (small, low capacity factor gas combustion turbines often only operating during periods of peak demand). To the extent that any of these sources meet the applicability requirements and are covered in the Group 3 trading program under this proposed rulemaking, they would have an incentive to reduce emissions consistent with the ozone season NO_x allowance price. The EPA has not identified determinative evidence that there are additional meaningful, cost-effective upwind reductions from these emission controls that are not already being addressed by state rules. EPA’s analysis discussed in the EGU NO_x Mitigation Strategies Proposed Rule TSD highlights that there are 32 units emitting more than 10 tons per year on average for the 2019–2021 ozone seasons and lacking combustion controls or more advanced controls (totaling approximately 1,000 tons of ozone season NO_x emissions in 2021). Some of the units in the limited inventory are subject to state requirements delivering additional reductions by 2023. Moreover, the EPA analysis suggested \$25,000–\$30,000 per ton estimates for dry low NO_x burners or ultra-low NO_x burners at these units, and over \$100,000 per ton for SCR retrofit at some combustion turbines. Therefore, the EPA is not proposing any additional reductions from new controls for inclusion in its combustion control or retrofit technology breakpoints. Although the EPA is not proposing a mitigation technology for this type of unit, it requests comment on the potential emissions reductions and cost from such sources in covered states that do not currently have mitigation requirements for such sources.

2. Non-EGU NO_x Mitigation Strategies

a. Determining Non-EGU NO_x Reduction Potential

The number of different industries and emissions unit categories and types, as well as the total number of emissions units that comprise the universe of non-EGU sources, makes it challenging to define a single method to identify appropriate control technologies,

measures, or strategies and resulting impactful emissions reductions. Because of these challenges, the EPA adopted a different approach for assessing non-EGU NO_x emissions reduction potential than the approach for EGUs described in the preceding section. To assess emissions reduction potential from non-EGUs, the EPA first performed a screening assessment to identify those industries that could have the greatest air quality impact at downwind receptors. This was followed by an assessment estimating annual NO_x emissions reduction potential at specific cost thresholds for each of the most impactful industries. Next, the EPA estimated the reductions in ozone concentrations resulting from the emissions reductions for each industry in each of the 27 linked upwind states. As described later, the results indicate that the most impactful industries fall into two tiers based on the estimated reductions in ozone concentrations associated with the NO_x emissions reductions.

The Agency incorporated air quality information as a first step in an analytical framework to help determine potentially impactful industries to focus on for further assessing potential controls, emissions reduction potential, air quality improvements, and costs. The EPA developed the analytical framework using inputs from the air quality modeling for the Revised CSAPR Update for 2023,¹⁶¹ as well as the projected 2023 annual emissions inventory from the 2016v2 emissions platform that was used for the air quality modeling for this proposed rule. Additional information on the analytical framework is presented in the Non-EGU Screening Assessment memorandum available in the docket.

Using the Revised CSAPR Update modeling for 2023, the EPA identified upwind states linked to downwind nonattainment or maintenance receptors using the 1 percent of the NAAQS threshold criterion, which is 0.7 ppb (1 percent of a 70 ppb NAAQS). In 2023 there were 27 linked states for the 2015 ozone NAAQS: Alabama, Arkansas, California, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

¹⁶¹ The EPA used the Revised CSAPR Update air quality modeling for this screening assessment because the air quality modeling for this proposed rule was not completed in time to support the assessment.

¹⁵⁸ The EPA discussed its legal authority for and the technical viability of generation shifting as a method of emissions reduction under the good neighbor provision in the CSAPR Update. *See especially* 81 FR 74504, 74545–47; *see also* CSAPR Update Response to Comment Document at 546–550 (legal authority); *id.* 528–533 (technical feasibility). *See* Final Revised CSAPR Update, 86 FR 23096–97.

¹⁵⁹ The EPA also noted in the CSAPR Update, “Interpreting the Good Neighbor Provision to be sufficiently broad to authorize reliance on generation shifting is also consistent with the legislative history for the 1970 CAA Amendments. The Senate Report stated that to achieve the NAAQS, ‘[g]reater use of natural gas for electric power generation may be required.’ S. Rep. No. 91–1196 at 2.” 81 FR 74545 n.141.

¹⁶⁰ The feasibility of the timetable for emissions reductions from both EGUs and non-EGUs is further addressed in Section VII.A of this proposed rule.

To analyze non-EGU emissions units, the EPA aggregated the underlying projected 2023 emissions inventory data into industries defined by 4-digit NAICS. Then for linked states, the EPA followed the 2-step process below:

Step 1—The EPA identified industries whose potentially controllable emissions have the greatest ppb impact on downwind air quality, and

Step 2—The EPA determined which of the most impactful industries and emissions units had the most emissions reductions that would make meaningful air quality improvements at the downwind receptors at a marginal cost threshold the EPA determined using underlying control device efficiency and cost information.

To estimate the contributions by industry, defined by 4-digit NAICS, at each downwind receptor the EPA used the 2023 state-receptor specific Revised CSAPR Update ppb/ton values and the Revised CSAPR Update calibration factors used in the air quality assessment tool (AQAT) for control analyses in 2023.¹⁶² The EPA focused on assessing emissions units that emit greater than 100 tons per year (tpy) of NO_x.¹⁶³ By limiting the focus to potentially controllable emissions, well-controlled sources that still emit greater than 100 tpy are excluded. Instead, the focus is on uncontrolled sources or sources that could be better controlled at a reasonable cost. As a result, reductions from any industry identified by this process are more likely to be achievable and to lead to air quality improvements.

From this information, the EPA prepared a summary with the estimated total, maximum, and average contributions from each industry and the number of receptors with contributions greater than or equal to 0.01 ppb from each industry.¹⁶⁴ The

¹⁶² The calibration factors are receptor-specific factors. For the Revised CSAPR Update, the calibration factors were generated using 2016 base case and 2023 base case air quality model runs. These receptor-level ppb/ton factors are discussed in the Ozone Transport Policy Analysis Final Rule TSD found here: https://www.epa.gov/sites/default/files/2021-03/documents/ozone_transport_policy_analysis_final_rule_tsd_0.pdf.

¹⁶³ In the non-EGU emissions reduction assessment prepared for the Revised Cross State Air Pollution Rule Update (<https://www.regulations.gov/document/EPA-HQ-OAR-2020-0272-0014>), The EPA reviewed emissions units with >150 tpy of NO_x emissions. In this assessment, EPA broadened the scope to include emissions units with greater than or equal to 100 tpy of NO_x emissions.

¹⁶⁴ The EPA chose to include in the Non-EGU NO_x reduction potential analysis those industries that contribute at least 0.01 ppb to a downwind receptor in order to focus the analysis on the most impactful industries. The 0.01 criterion is based on an analysis of the distribution and relative

EPA used this information to identify breakpoints in the data to determine which industries to focus on for the next steps in its analysis, as described in the Non-EGU Screening Assessment memorandum.

A review of the maximum contribution data indicated that the EPA should focus the assessment of NO_x reduction potential and cost primarily on four industries. These industries each (1) have a maximum contribution to any one receptor of greater than 0.10 ppb and (2) contribute greater than or equal to 0.01 ppb to at least 10 receptors. The four industries identified below comprise the “Tier 1” non-EGU industries.

- Pipeline Transportation of Natural Gas
- Cement and Concrete Product Manufacturing
- Iron and Steel Mills and Ferroalloy Manufacturing
- Glass and Glass Product Manufacturing

In addition to these industries, the maximum contribution data suggests including five additional industries as a second tier in the assessment. These industries each either have (1) a maximum contribution to any one receptor greater than or equal to 0.10 ppb but contribute greater than or equal to 0.01 ppb to fewer than 10 receptors, or (2) a maximum contribution less than 0.10 ppb but contribute greater than or equal to 0.01 ppb to at least 10 receptors. The five industries identified below comprise the “Tier 2” non-EGU industries.

- Basic Chemical Manufacturing
- Petroleum and Coal Products Manufacturing
- Metal Ore Mining
- Lime and Gypsum Product Manufacturing
- Pulp, Paper, and Paperboard Mills

For additional discussion of the contribution information, see Appendix A of the Non-EGU Screening Assessment memorandum included in the docket for this proposed rulemaking.

Next, to identify an annual cost threshold for evaluating potential emissions reductions in the Tier 1 and Tier 2 industries, the EPA used the Control Strategy Tool (CoST),¹⁶⁵ the

magnitude of contributions from 41 industries, as identified in the Non-EGU Screening Assessment memorandum. From this analysis the EPA determined that 0.01 ppb provides a meaningful conservative breakpoint for screening out non-impactful industries from the Non-EGU analysis in this proposed rule. Details on this analysis that provides the basis for using 0.01 ppb can be found in the Non-EGU Screening Assessment memorandum.

¹⁶⁵ Further information on CoST can be found at the following link: <https://www.epa.gov/economic->

Control Measures Database (CMDB),¹⁶⁶ and the projected 2023 emissions inventory to prepare a listing of potential control measures, and costs, applied to non-EGU emissions units in the projected 2023 emissions inventory. Using these data, the EPA plotted curves for Tier 1 industries, Tier 2 industries, Tier 1 and 2 industries, and all industries at \$500 per ton increments. Figure 1 on page 4 of the Non-EGU Screening Assessment memorandum, which is available in the docket for this proposed rulemaking, indicates there is a “knee in the curve” at approximately \$7,500 per ton (all non-EGU cost estimates in the assessment and presented in the rest of this section are in 2016 dollars). The EPA used this marginal cost threshold to further assess potential control strategies, estimated emissions reductions, air quality improvements, and costs from the potentially impactful industries. Note that controls and related emissions reductions are available at several estimated cost levels up to the \$7,500 per ton threshold. (These costs do not include monitoring, recordkeeping, reporting, or testing costs.)

Next, using the marginal cost threshold of \$7,500 per ton, to estimate emissions reductions and costs the EPA processed the CoST run using the maximum emissions reduction algorithm,¹⁶⁷ with known controls.¹⁶⁸ The EPA identified controls for non-EGU emissions units in the Tier 1 and Tier 2 industries that cost up to \$7,500 per ton. The EPA then calculated air quality impacts associated with the estimated reductions for the 27 linked states in 2023 using the following steps.

1. The EPA binned the estimated reductions by 4-digit NAICS code into the Tier 1 and Tier 2 industries.

2. The EPA used the 2023 state-receptor specific Revised CSAPR Update ppb/ton values and the Revised CSAPR Update calibration factors used in the AQAT for control analyses in 2023. The EPA multiplied the estimated

and-cost-analysis-air-pollution-regulations/cost-analysis-modeltools-air-pollution.

¹⁶⁶ The CMDB is available at the following link: [https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-analysis-modeltools-air-pollution.](https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-analysis-modeltools-air-pollution)

¹⁶⁷ The maximum emissions reduction algorithm assigns to each source the single measure (if a measure is available for the source) that provides the maximum reduction to the target pollutant. For more information, see the CoST User's Guide available at the following link: <https://www.cmascenter.org/cost/documentation/3.7/CoST%20User's%20Guide/>.

¹⁶⁸ Known controls are well-demonstrated control devices and methods that are currently used in practice in many industries. Known controls do not include cutting edge or emerging pollution control technologies.

non-EGU reductions by the ppb/ton values and by the receptor-specific calibration factor to estimate the ppb impacts from these emissions reductions.

Next, because boilers represent the majority emissions units in the Tier 2 industries for which there were controls that cost up to \$7,500 per ton, the EPA further targeted emissions reductions and air quality improvements in Tier 2 industries by identifying potentially impactful industrial, commercial, and institutional (ICI) boilers. To identify potentially impactful boilers, using the projected 2023 emissions inventory in the linked upwind states, the EPA identified a universe of boilers with greater than 100 tpy NO_x emissions that had contributions at downwind receptors.^{169 170} The EPA refined the universe of boilers to a subset of impactful boilers by sequentially applying the three criteria below to each boiler. This approach is similar to the overall analytical framework and was tailored for application to individual boilers.¹⁷¹

- Criterion 1—Estimated maximum air quality contribution at an individual receptor of greater than or equal to 0.0025 ppb or estimated total contribution across downwind receptors of greater than or equal to 0.01 ppb.

- Criterion 2—Controls that cost up to \$7,500 per ton.

- Criterion 3—Estimated maximum air quality improvement at an individual receptor of greater than or equal to 0.001 ppb.

Lastly, the EPA updated its analytical framework to the 2026 analytic year by which the EPA is proposing non-EGU controls be installed across the Tier 1 and Tier 2 industries and various emissions unit types. The EPA concluded, based on the most recent information available from the CSAPR Update Non-EGU TSD,¹⁷² that controls

¹⁶⁹ The EPA used the 2023fj non-EGU point source inventory files from the 2016v2 emissions platform.

¹⁷⁰ Maryland, Missouri, Nevada, and Wyoming did not have boilers with >100 tpy NO_x emissions.

¹⁷¹ For the impactful boiler assessment, the estimated air quality contributions and improvements were not based on modeling of individual emissions units or emissions source sectors. The air quality estimates were derived by using the 2023 state/receptor specific Revised CSAPR Update ppb/ton values and the Revised CSAPR Update calibration factors used in AQAT. The results indicate a level of precision not supported by the underlying air quality modeling. The results were intended to provide an indication of the relative impact across sources.

¹⁷² Final Technical Support Document (TSD) for the Final Cross-State Air Pollution Rule for the 2008 Ozone NAAQS, Assessment of Non-EGU NO_x Emissions Controls, Cost of Controls, and Time for Compliance Final TSD (“CSAPR Update Non-EGU TSD”), August 2016, available at [https://](https://www.epa.gov/csapr/assessment-non-egu-nox-emission-controls-cost-controls-and-time-compliance-final-td)

on all of the non-EGU emissions units cannot be installed by the 2023 ozone season. The EPA prepared the non-EGU screening assessment for the year 2026 by generally applying the analytical framework detailed above, with some modifications. The updated screening assessment results for 2026 are discussed in Section VI.C.2¹⁷³ of this proposed rule. Specifically, the EPA

- Retained the impactful industries identified in Tier 1 and Tier 2, the \$7,500 cost per ton threshold, and the methodology for identifying impactful boilers;
- Modified the framework to address challenges associated with using the projected 2023 emissions inventory by using the 2019 emissions inventory;¹⁷⁴ and
- Updated the air quality modeling data by using the most recent air quality modeling data for this proposal for the analytic year 2026.

3. Other Stationary Sources NO_x Mitigation Strategies

As part of its analysis for this proposed rule, the EPA also reviewed whether NO_x mitigation strategies for any other stationary sources may be appropriate. In this section, the EPA discusses three classes of units that have historically been excluded from our interstate air transport programs: (1) Units less than or equal to 25 MW, (2) solid waste incineration units, and (3) cogeneration units. EPA’s initial assessment does not lead it to propose inclusion of the units less than or equal to 25 MW, but the EPA is requesting comment on any particular units within this category that may offer cost-effective reduction potential. The EPA is also taking comment on and considering whether to include emissions limitations for solid waste incineration units (many of which are less than 25 MW) in a final rule, as discussed later. For cogeneration units previously exempted from EGU emissions budgets established through ozone interstate transport rules, the EPA has not

www.epa.gov/csapr/assessment-non-egu-nox-emission-controls-cost-controls-and-time-compliance-final-td.

¹⁷³ The non-EGU screening assessment is not intended to be, nor take the place of, a unit-specific detailed engineering analysis that evaluates the feasibility of retrofits for the emissions units, potential controls, and related costs. For more detailed discussion of these issues, see Section VII.C of this proposed rule and the Non-EGU Sectors TSD included in the docket.

¹⁷⁴ The EPA determined that the 2019 inventory was appropriate because it provided a more accurate prediction of potential near-term emissions reductions. See the Non-EGU Screening Assessment memorandum, available in the docket, for a discussion of the challenges associated with using the projected 2023 emissions inventory.

identified a basis for inclusion in this proposal.

The EPA has not historically identified substantial emissions reduction or air quality gains from corresponding reductions from these segments of units and has therefore not considered inclusion of these segments of stationary sources in its federal programs for interstate transport.

However, given the need to implement a full remedy to address interstate transport, the more stringent 2015 ozone NAAQS of 70 ppb, and the extended period of time for which the EPA projects upwind contribution to persistent nonattainment and maintenance problems, the EPA is requesting comment on whether sources within these three segments—units serving a generator equal or smaller than 25 MW, cogeneration units, and solid waste incineration units—could merit inclusion within EPA’s proposed NO_x mitigation strategy in this rule.

Specifically, the EPA requests comment on available NO_x mitigation technologies, NO_x emissions rate performance, total potentially available NO_x reductions, installation timing, cost, air quality impacts, source-specific information, and any other information that could inform a control determination specific to these three types of units. The EPA provides an assessment of these three segments, their emissions control opportunities, and potential air quality benefits below. Additional considerations are further discussed in the EGU NO_x Mitigation Strategies Proposed Rule TSD.

a. Units Less Than or Equal to 25 MW

The EPA has historically not included control requirements for emissions for units less than or equal to 25 MW for three primary reasons: Low potential reductions, relatively high cost per ton of reduction, and high monitoring and other compliance burdens. In the January 11, 1993, Acid Rain permitting rule, the EPA provided for a conditional exemption from the emissions reduction, emitting, and emissions monitoring requirements of the Acid Rain Program for new units having a nameplate capacity of 25 MWe or less that burn fuels with a sulfur content no greater than 0.05% by weight, because of the *de minimis* nature of their potential SO₂, CO₂ and NO_x emissions. See 63 FR 57484. The NO_x SIP Call identified these as *Small Point Sources*. For the purposes of that rulemaking, the EPA considered electricity generating boilers and turbines serving a generator 25 MWe or less, to be small point sources. The EPA noted that the collective emissions from small sources

were relatively small and the administrative burden to the states and regulated entities of controlling such sources was likely to be considerable. As a result, the rule did not assume reductions from those sources in state emissions budgets requirements (63 FR 57402). Similar size thresholds have been incorporated in subsequent transport programs such as CAIR and CSAPR. As these sources were not identified as having cost-effective reductions and so were not included in those programs, they were also exempted from certain reporting requirements and the data for these sources is, therefore, not of the same caliber as that of covered larger sources.

EPA's preliminary survey of current data, compared to this initial justification, does not appear to offer a compelling reason to depart from this past practice by requiring emission reductions from these small EGU sources as part of this rule. For instance, as explained in the EGU NO_x Mitigation Strategies Proposed Rule TSD, EPA has evaluated the costs of SCR retrofits at small EGUs using its Retrofit Cost Analyzer and found that such controls become markedly less cost-effective at lower levels of generating capacity. This analysis concluded that, after controlling for all other unit characteristics, the dollar per ton cost for a SCR retrofit increases by about a factor of 2.5 when moving from a 500 MW to a 10 MW unit, and a factor of 8 when moving to a 1 MW unit.¹⁷⁵ Moreover, the EPA estimates that under 6% of nationwide EGU emissions come from units less than 25 MW and not covered by current applicability criteria due to this size exemption threshold. Therefore, the EPA is not proposing to require any emissions reductions from these units, but the EPA requests comment on whether there are any cost-effective reductions and corresponding air quality benefits to nonattainment or maintenance receptors from any units within this segment.

b. Municipal Solid Waste Units

The EPA seeks comment on whether NO_x emissions reductions should be sought from municipal solid waste combustor units (MWCs) to address interstate ozone transport. As noted below, MWCs emit substantial amounts of NO_x, and some states have required emissions limits for these facilities that are more stringent than the federal requirements contained within EPA's

¹⁷⁵ Preliminary estimate based on representative coal units with starting NO_x rate of 0.2 lb/mmBtu, 10,000 BTU/kwh, and assuming 80 percent reduction.

new source performance standard (NSPS) for this industry. These more stringent limits, if applied broadly to the 26 states included in this proposed FIP action, would create an additional means of reducing NO_x emissions.

MWCs burn garbage and other non-hazardous solid material using a variety of combustion techniques. Section 2.1, Refuse Combustion, of the EPA emissions factor reference document AP-42¹⁷⁶ contains a description of the seven different combustion process technologies most commonly used in the industry. A copy of Section 2.1 of AP-42 is included within the Docket for this proposed rule. These seven combustion processes are as follows: Mass burn waterwall, mass burn rotary waterwall, mass burn refractory wall, refuse-derived fuel-fired, fluidized bed, modular starved air, and modular excess air. Section 2.1 of AP-42 contains detailed process descriptions of each of these MWC processes. During the combustion process, a number of pollutants are produced, including NO_x, which forms through oxidation of nitrogen in the waste and from fixation of nitrogen in the air used to burn the waste. NO_x emissions from MWCs are typically released through tall stacks which enables the emissions to be transported long distances.

Most MWCs are cogeneration facilities that recover heat from the combustion process to power a turbine to produce electricity. According to a 2018 report from the Energy Recovery Council,¹⁷⁷ 72 of the 75 operating MWC facilities in the U.S. produce electricity from heat captured from the combustion process. The electrical output of MWCs is relatively small compared to the EGUs that will be regulated per the proposed requirements of Section VII.B of this proposal, with most MWCs having an electrical output capacity of less than 25 MW. The Non-EGU Sectors TSD located in the Docket identifies the electrical output capacity for MWC units that produce electricity as reflected in EPA's NEEDS database.

However, despite their relatively small electricity-generating potential, NO_x emissions from MWCs located in the transport states identified in this proposal are substantial. According to the EPA's NEI database, MWCs emitted 19,222 tons of NO_x in 2017 in the ten states included in this proposal that

¹⁷⁶ AP-42, Fifth Edition Compilation of Air Pollutant Emissions Factors, Volume 1: Stationary Point and Area Sources, available at: <https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors>.

¹⁷⁷ "2018 Directory of Waste to Energy Facilities"; Energy Recovery Council.

contain them. Table 8 of the Non-EGU Sectors TSD contains a list of MWC facilities located within the states included in this proposal along with their NO_x emissions as reported to the NEI.

The EPA has promulgated NO_x emissions limits for large MWCs, defined as those that process 250 tons of municipal solid waste per day or more at 40 CFR part 60, subpart Cb and 40 CFR part 60, subpart Eb. Subpart Cb is applicable to MWCs that commenced construction on or before September 20, 1994, while Subpart Eb is applicable to MWCs that commenced construction, modification, or reconstruction after September 20, 1994. The NO_x limits for subpart Cb are found within Tables 1 and 2 of 40 CFR 60.39b and range from 165 to 250 ppm depending on the combustor design type. The NO_x limits for Subpart Eb are found at 40 CFR 60.52b(d) and are 180 ppm during a unit's first year of operation and drop to 150 ppm afterwards, applicable across all combustor types. These limits correspond to NO_x emissions rates of 0.31 and 0.26 lbs/MMBtu, respectively.

Section 182(b)(2) and (f) of the CAA requires states with ozone nonattainment areas classified as Moderate or higher to adopt regulations with control requirements representing reasonably available control technology (RACT) for major sources of VOCs and NO_x. Sections 184(b)(1)(B) and 182(f) of the Act require RACT requirements be adopted in all areas included within the Ozone Transport Region (OTR). Due primarily to the NO_x RACT requirement, many states within the Northeast located within the OTR have adopted NO_x emissions limits for MWCs that are more stringent than what would otherwise be required by EPA's NSPS or the emissions guideline for these units. For example, the Montgomery County Resource Recovery Facility in Maryland is required to meet a NO_x RACT limit of 140 ppm (at 7 percent oxygen) on a 24-hour block average. Additionally, MWC facilities located in Virginia operated by Covanta, Inc., are required to meet a NO_x RACT limit of 110 ppm (at 7 percent oxygen) on a 24-hour basis, and a limit of 90 ppm (at 7 percent oxygen) on an annual average basis.¹⁷⁸ The 110 ppm limit equates to a limit of 0.19 lbs/MMBtu.

The Ozone Transport Commission (OTC) issued a report entitled "Municipal Waste Combustor Workgroup Report" in June of 2021. The

¹⁷⁸ The NO_x permit limits for the Montgomery County facility and the Virginia facilities can be found within the OTC's Municipal Waste Combustor Workgroup Report included within the Docket for this proposed rule.

report is included within the docket for this proposal.¹⁷⁹ The report notes that MWCs are a significant source of NO_x emissions in the OTR, releasing approximately 22,000 tons of NO_x from facilities within 9 OTR states in 2018. The report summarizes the results of a literature review of state-of-the-art NO_x controls that have been successfully installed and concludes that significant reductions could be achieved using several different technologies described in the report, primarily via combustion modifications made to MWC units already equipped with SNCR. The MWC workgroup evaluated the emissions reduction potential from two different control levels, one based on a NO_x concentration in the effluent of 105 to 110 ppm, and another based on a limit of 130 ppm. The workgroup's findings were that a control level of 105 parts per million by volume, dry (ppmvd) on a 30-day average basis and a 110 ppmvd on a 24-hour averaging period would reduce NO_x emissions from MWCs by approximately 7,300 tons annually, and that a limit of 130 ppmvd on a 30 day-average could achieve a 4,000 ton reduction. The report notes that 8 MWC units exist that are already subject to permit limits of 110 ppm, 7 in Virginia, and one in Florida. Studies evaluating MWCs similar in design to the large MWCs in the OTR found NO_x reductions could be achieved at costs ranging from \$2,900 to \$6,600 per ton of NO_x reduced. Based on the findings of this report, the Commissioners of the states within the OTR adopted a resolution to develop a recommendation for emissions reductions from MWCs during their June 15, 2021, annual public meeting.¹⁸⁰

In light of the above, the EPA requests comment on whether NO_x limits for MWCs located in the states covered by this proposed rule should be included in the final FIP. Specifically, if NO_x controls are included in the final FIP, the EPA requests comment on the following issues:

- What NO_x emissions limit and averaging time should MWCs be required to meet, and in particular should the EPA adopt emissions rates of 105 ppmvd on a 30-day averaging basis and 110 ppmvd on a 24-hour averaging basis?
- What types of NO_x control technology could be used to reduce NO_x emissions at MWCs, and in particular

should the EPA adopt the combustion control modifications made to units with previously installed SNCR identified by the MWC workgroup?

- Whether there is information that would call into question the OTC workgroup's estimated cost of controls for reducing NO_x emissions from MWCs of \$2,900 to \$6,600 per ton, and, assuming that range is accurate, whether there is any justification for not requiring these controls in light of their relative cost-effectiveness and total level of reductions available, which compare favorably with the proposed EGU and non-EGU control strategies?

- If the final FIP includes emissions reduction requirements for MWCs, should any mechanism be available by which a particular MWC source could seek to establish that meeting the required emissions limits is not feasible?

- Is there any evidence that retrofit of MWC emissions controls would take longer to implement than the 2026 ozone season?

- Would it be appropriate to rely on existing testing, monitoring, recordkeeping, and reporting requirements for MWCs under the applicable NSPS or other requirements?

c. Cogeneration Units

Consistent with prior transport rules, fossil fuel-fired boilers and combustion turbines that produce both electricity and useful thermal energy (generally referred to as "cogeneration units") and that meet the applicability criteria to be included in the CSAPR NO_x Ozone Season Group 3 Trading Program would be subject to the emissions reduction requirements established in this rulemaking for EGUs. However, those applicability criteria—which the EPA is not proposing to alter in this rulemaking (see Section VII.B.3 of this proposed rule)—exempt some cogeneration units from coverage as EGUs under the trading program. The EPA is proposing that fossil fuel-fired boilers and combustion turbines that produce both electricity and useful thermal energy and that do not meet the applicability criteria to be included in the CSAPR NO_x Ozone Season Group 3 Trading Program as EGUs would not be subject to any other emissions reduction requirements under this rulemaking.

Cogeneration systems can offer considerable environmental benefit as they often require less fuel to produce a given energy output. The average efficiency of fossil-fuel fired power plants in the United States is 33 percent. This means that two-thirds of the energy used to produce electricity at most power plants in the United States is

wasted in the form of heat discharged to the atmosphere. By recovering wasted heat, combined heat and power (CHP) systems at cogeneration units typically achieve total system efficiencies of 60 to 80% for producing electricity and useful thermal energy. Some systems achieve efficiencies approaching 90%. This increased efficiency allows the same level of energy use to be achieved with fewer criteria-pollutant and greenhouse gas emissions. Additionally, these systems increase the reliability of access to electrical power for the facilities they serve and reduce the need for electricity from regional power plants and their associated transmission and distribution networks.

According to information contained in the EPA's Combined Heat and Power Partnership's document "Catalog of CHP Technologies",¹⁸¹ there are 4,226 CHP installations in the U.S. providing 83,317 MWe of electrical capacity. Over 99% of the installations are powered by 5 equipment types, those being reciprocating engines (52 percent), boilers/steam turbines (17 percent), gas turbines (16 percent), microturbines (8 percent), and fuel cells (4 percent). The majority of the electrical capacity is provided by gas turbine CHP systems (64 percent) and boiler/steam turbine CHP systems (32 percent). The various CHP technologies described above are available in a large range of sizes, from as small as 1 kilowatt reciprocating engine systems to as large as 300 megawatt gas turbine powered systems.

NO_x emissions from fuel cell powered systems are negligible, and NO_x emissions from rich-burn reciprocating engine, gas turbine, and microturbine systems are low, ranging from 0.013 to 0.05 lbs/mmBTU. NO_x emissions from lean-burn reciprocating engine systems and gas-powered steam turbines systems range from 0.1 to 0.2 lbs/mmBTU. The highest NO_x emitting CHP units are solid fuel-fired boiler/steam turbine systems which emit NO_x at rates ranging from 0.2 to 1.2 lbs/mmBTU. A preliminary assessment from EPA's IPM Summer 2021 Reference Case model suggest that cogeneration units exempted from current EPA EGU transport programs due to such classification are projected to account for approximately 5% of nationwide summer NO_x emissions in 2023.¹⁸²

¹⁸¹ This document is available at: https://www.epa.gov/sites/default/files/2015-07/documents/catalog_of_chp_technologies.pdf.

¹⁸² <https://www.epa.gov/airmarkets/results-using-epas-power-sector-modeling-platform-v6-summer-2021-reference-case>. The EPA notes that cogeneration units not exempted from EGU Air programs are included in the EPA assessment of

¹⁷⁹ This report is also available at <https://otcair.org/upload/Documents/Reports/20210624%20OTC%20SAS%20MWC%20report%20final.pdf>.

¹⁸⁰ See "Notice of Proposed rules Taken by Ozone Transport Commission At Annual Public Meeting, June 15, 2021" included in the Docket for this proposed rule.

Under the proposed rule (consistent with prior CSAPR rulemakings), certain cogeneration units would be exempt from coverage under the CSAPR NO_x Ozone Season Group 3 Trading Program as EGUs. Specifically, the trading program regulations include an exemption for a unit that qualifies as a cogeneration unit throughout the later of 2005 or the first 12 months during which the unit first produces electricity and continues to qualify through each calendar year ending after the later of 2005 or that 12-month period and that meets the limitation on electricity sales to the grid. In order to meet the trading program's definition of "cogeneration unit" under the regulations, a unit (*i.e.*, a fossil-fuel-fired boiler or combustion turbine) must be a topping-cycle or bottoming-cycle type that operates as part of a "cogeneration system." A cogeneration system is defined as an integrated group of equipment at a source (including a boiler, or combustion turbine, and a generator) designed to produce useful thermal energy for industrial, commercial, heating, or cooling purposes and electricity through the sequential use of energy. A topping-cycle unit is a unit where the sequential use of energy results in production of useful power first and then, through use of reject heat from such production, in production of useful thermal energy. A bottoming-cycle unit is a unit where the sequential use of energy results in production of useful thermal energy first, and then, through use of reject heat from such production, in production of useful power. In order to qualify as a cogeneration unit, a unit also must meet certain efficiency and operating standards in 2005 and each year thereafter. The electricity sales limitation under the exemption is applied in the same way whether a unit serves only one generator or serves more than one generator. In both cases, the total amount of electricity produced annually by a unit and sold to the grid cannot exceed the greater of one-third of the unit's potential electric output capacity or 219,000 MWh. This is consistent with the approach taken in the Acid Rain Program (40 CFR 72.7(b)(4)), where the cogeneration-unit exemption originated.

The EPA is requesting comment on the proposal to exempt cogeneration units meeting the above criteria from any emissions reduction requirements under this proposed rulemaking. The EPA also requests comment on the alternative of requiring fossil fuel-fired

boilers in the non-EGU industries identified earlier (Section VI.B.2.a of this proposed rule) that serve electricity generators and that qualify for an exemption from inclusion in the CSAPR NO_x Ozone Season Group 3 Trading Program as EGUs to instead meet the same emissions standards, if any, that would apply under this proposed rulemaking to fossil fuel-fired boilers at facilities in the same non-EGU industries that do not serve electricity generators. These proposed emissions standards are set forth in Section VII.C.5 of this proposed rule. Cogeneration units at these facilities are in the non-EGU industries identified in EPA's non-EGU screening assessment for this proposal (although potential emissions reductions from such cogeneration units were not specifically quantified in the assessment). Under this alternative approach, to the extent these industries have otherwise been determined in this proposal to significantly contribute to nonattainment or interfere with maintenance, the EPA would find that cogeneration units in these industries should not be excluded from EPA's overall NO_x mitigation strategy.

4. Mobile Source NO_x Mitigation Strategies

Under a variety of CAA programs, the EPA has established federal emissions and fuel quality standards that reduce emissions from cars, trucks, buses, nonroad engines and equipment, locomotives, marine vessels, and aircraft (*i.e.*, "mobile sources"). Because states are generally preempted from regulating new vehicles and engines with certain exceptions (*see generally* CAA sections 209, 177), mobile source emissions are primarily controlled through EPA's federal programs. The EPA has been regulating mobile source emissions since it was established as a federal agency in 1970, and all mobile source sectors are currently subject to NO_x emissions standards. The EPA factors these standards and associated emissions reductions into its baseline air quality assessment in good neighbor rulemaking, including in this proposed rule. These data are factored into EPA's analysis at Steps 1 and 2 of the 4-step framework. As a result of this long history, NO_x emissions from onroad and nonroad mobile sources have substantially decreased (73 percent and 57 percent since 2002, for onroad and nonroad, respectively)¹⁸³ and are predicted to continue to decrease into the future as newer vehicles and engines

that are subject to the most recent, stringent standards replace older vehicles and engines.¹⁸⁴

For example, in 2014, the EPA promulgated new, more stringent emissions and fuel standards for light-duty passenger cars and trucks.¹⁸⁵ The fuel standards took effect in 2017, and the vehicle standards phase in between 2017 and 2025. Other EPA actions that are continuing to reduce NO_x emissions include the Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (66 FR 5002; January 18, 2001); the Clean Air Nonroad Diesel Rule (69 FR 38957; June 29, 2004); the Locomotive and Marine Rule (73 FR 25098; May 6, 2008); the Marine Spark-Ignition and Small Spark-Ignition Engine Rule (73 FR 59034; October 8, 2008); the New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder Rule (75 FR 22895; April 30, 2010); and the Aircraft and Aircraft Engine Emissions Standards (77 FR 36342; June 18, 2012).

The EPA is currently developing a new regulatory effort to reduce NO_x and other pollution from heavy-duty trucks (known as the Cleaner Trucks Initiative), as described in the January 21, 2020, Advance Notice of Proposed Rulemaking (85 FR 3306). Heavy-duty vehicles are the largest contributor to mobile source emissions of NO_x and will be one of the largest mobile source contributors to ozone in 2025.¹⁸⁶ Reducing heavy-duty vehicle emissions nationally would improve air quality where the trucks are operating as well as downwind. As required by CAA section 202(a)(3)(A) of the Act, the EPA will be proposing NO_x emissions standards that "reflect the greatest degree of emissions reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology." Section 202(a)(3)(C) of the Act requires that standards apply for no less than 3 model years and apply no earlier than 4 years after promulgation.

The EPA's existing regulatory program for mobile sources will

¹⁸⁴ National Emissions Inventory Collaborative (2019). 2016v1 Emissions Modeling Platform. Retrieved from <http://views.cira.colostate.edu/wiki/wiki/10202>.

¹⁸⁵ Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emissions and Fuel Standards, 79 FR 23414 (April 28, 2014).

¹⁸⁶ Zawacki et al., 2018. Mobile source contributions to ambient ozone and particulate matter in 2025. *Atmospheric Environment*. Vol 188, pg 129–141. Available online: <https://doi.org/10.1016/j.atmosenv.2018.04.057>.

EGU reduction potential in Section VI.B.1 of this proposed rule.

¹⁸³ US EPA. Our Nation's Air: Status and Trends Through 2019. <https://gispub.epa.gov/air/trendsreport/2020/#home>.

continue to reduce NO_x emissions into the future, and the EPA is currently taking active steps to ensure that these NO_x reductions occur. The CAA prohibits tampering with emissions controls, as well as manufacturing, selling, and installing aftermarket devices intended to defeat those controls. The EPA currently has a National Compliance Initiative called “Stopping Aftermarket Defeat Devices for Vehicles and Engines,” which focuses on stopping the manufacture, sale, and installation of hardware and software specifically designed to defeat required emissions controls on onroad and nonroad vehicles and engines.

C. Control Stringencies Represented by Cost Threshold (\$ per Ton) and Corresponding Emissions Reductions

1. EGU Emissions Reduction Potential by Cost Threshold

For EGUs, as discussed in Section VI.A of this proposed rule, the multi-

factor test considers increasing levels of uniform control stringency in combination with considering total NO_x reduction potential and corresponding air quality improvements. The EPA evaluated EGU NO_x emissions controls that are widely available (described previously in Section VI.B.1 of this proposed rule), that were assessed in previous rules to address ozone transport, and that have been incorporated into state planning requirements to address ozone nonattainment.

The EPA evaluated the EGU sources within the state of California and found there were no covered coal steam sources greater than 100 MW that would have emissions reduction potential according to EPA’s assumed EGU SCR retrofit mitigation technologies.¹⁸⁷ The EGUs in the state are sufficiently well-controlled resulting in the lowest fossil-fuel emission rate and highest share of renewable generation among the 26

states examined at Step 3. EPA’s Step 3 analysis, including analysis of the emissions reduction factors from EGU sources in the state, therefore resulted in no additional emission reductions required to eliminate significant contribution from any EGU sources in California.

The tables below summarize the emissions reduction potentials (in ozone season tons) from these emissions controls across the affected jurisdictions. Table VI.C.1–1 focuses on near-term emissions controls while Table VI.C.1–2 includes emissions controls with extended implementation timeframes.

TABLE VI.C.1–1—EGU OZONE-SEASON EMISSIONS AND REDUCTION POTENTIAL (tons)—2023

State	Baseline 2023 OS NO _x	Reduction potential (tons) for varying levels of technology inclusion			
		SCR optimization	SCR optimization + combustion control upgrades *	SCR/SNCR optimization + combustion control upgrades	SCR/SNCR optimization + combustion control upgrades + generation shifting
Alabama	6,648	32	156	156	387
Arkansas	8,955	28	28	28	66
Delaware	423	35	35	39	35
Illinois	7,662	70	70	247	120
Indiana	12,351	856	856	865	1,191
Kentucky	13,900	446	1,047	1,047	2,260
Louisiana	9,987	579	579	675	579
Maryland	1,208	0	0	8	13
Michigan	10,737	4	4	19	4
Minnesota	4,207	98	98	139	246
Mississippi	5,097	73	697	697	697
Missouri	20,094	7,345	7,345	7,569	8,013
Nevada	2,346	66	66	66	66
New Jersey	915	105	105	105	116
New York	3,927	64	64	64	164
Ohio	10,295	1,161	1,161	1,161	1,926
Oklahoma	10,463	199	890	890	890
Pennsylvania	12,242	2,878	2,878	2,978	3,287
Tennessee	4,319	110	110	110	85
Texas	40,860	921	921	1,154	2,344
Utah	15,500	7	7	7	519
Virginia	3,415	164	242	296	271
West Virginia	14,686	554	1,099	1,380	1,927
Wisconsin	5,933	7	7	26	-50
Wyoming	10,191	82	677	690	1,648
Total	236,363	15,883	19,143	20,417	26,806

* The EPA shows reduction potential from state-of-the-art LNB upgrade as near-term reduction emissions controls, but explains in Section VI.B and VI.D of this proposed rule that this reduction potential would not be implemented until 2024 for states not included in the Revised CSAPR Update.

¹⁸⁷ The only coal-fired power plant in California is the 63 MW Argus Cogeneration facility in Trona, California.

TABLE VI.C.1–2—EGU OZONE-SEASON EMISSIONS AND REDUCTION POTENTIAL (tons)—2026

State	Baseline 2026 OS NO _x	Reduction potential (tons) for varying levels of technology inclusion				
		SCR optimization	SCR optimization + combustion control upgrades	SCR/SNCR optimization + combustion control upgrades	SCR/SNCR optimization + combustion control upgrades + SCR/SNCR retrofits	SCR/SNCR optimization + combustion control upgrades + SCR/SNCR retrofits + generation shifting
Alabama	6,701	32	156	156	916	916
Arkansas	8,728	28	28	28	4,697	4,805
Delaware	473	35	35	39	39	39
Illinois	7,763	70	70	247	1,298	1,648
Indiana	9,737	720	720	729	1,740	1,946
Kentucky	13,211	446	885	885	5,450	5,638
Louisiana	9,854	579	579	675	6,102	6,102
Maryland	1,208	0	0	8	8	19
Michigan	9,129	4	4	19	2,959	3,015
Minnesota	4,197	98	98	139	1,613	1,661
Mississippi	5,077	73	697	697	3,164	3,163
Missouri	18,610	7,345	7,345	7,569	11,237	11,364
Nevada	2,438	66	66	66	1,227	1,227
New Jersey	915	105	105	105	105	116
New York	3,927	64	64	64	589	689
Ohio	10,295	1,161	1,161	1,161	1,354	1,709
Oklahoma	10,283	199	890	890	5,968	6,008
Pennsylvania	11,738	2,737	2,737	2,837	4,510	4,919
Tennessee	4,064	81	81	81	81	81
Texas	39,186	921	921	1,154	15,817	17,240
Utah	9,679	7	7	7	7,076	7,059
Virginia	3,243	164	242	263	646	676
West Virginia	14,686	554	1,099	1,380	3,660	4,089
Wisconsin	3,628	7	7	26	54	155
Wyoming	10,249	82	677	690	5,669	5,759
Total	219,017	15,577	18,675	19,917	85,978	90,041

2. Non-EGU Emissions Reduction Potential—Cost Threshold Up to \$7,500/ton

The EPA used the updated non-EGU screening assessment for 2026 to estimate emissions reduction potential from the Tier 1 and Tier 2 industries and non-EGU emissions units. The EPA used CoST to identify emissions units, emissions reductions, and associated compliance costs to evaluate the effects of potential non-EGU emissions control measures and technologies. CoST is designed to be used for illustrative control strategy analyses (e.g., NAAQS regulatory impact analyses) and not for unit-specific, detailed engineering analyses. These estimates from CoST identify proxies for (1) non-EGU emissions units that have emissions reduction potential, (2) potential controls for and emissions reductions from these emissions units, and (3) control costs from the potential controls on these emissions units. The cost

estimates do not include monitoring, recordkeeping, reporting, or testing costs.

To prepare the non-EGU screening assessment for 2026, the EPA applied the analytical framework detailed in Section VI.B.2 of this proposed rule. The assessment includes emissions units from the Tier 1 industries and impactful high-emitting boilers in Tier 2 Industries. Using the latest air quality modeling for 2026, the EPA identified upwind states linked to downwind nonattainment or maintenance receptors using the 1% of the NAAQS threshold criterion, or 0.7 ppb. In 2026 there are 23 linked states for the 2015 ozone NAAQS: Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

The EPA re-ran CoST with known controls, the CMDB, and the 2019 emissions inventory.¹⁸⁸ The EPA specified CoST to allow replacing an existing control if a replacement control is estimated to be greater than 10% more effective than the existing control. The EPA did not replace an existing control if the 2019 emissions inventory indicated the presence of that control, even if the CMDB reflects a greater control efficiency for that control. Also, the EPA removed six facilities from consideration because they are subject to an existing consent decree, are shut down, or will shut down by 2026. For additional detail on the six facilities removed, see Appendix B in the Non-EGU Screening Assessment memorandum. Table VI.C.2–1 summarizes the estimated reductions, total ppb improvements across all receptors, and annual total and average annual costs (in 2016 dollars) and Table VI.C.2–2 below summarizes the estimated reductions by state.

¹⁸⁸ The EPA determined that the 2019 inventory was appropriate because it provided a more

accurate prediction of potential near-term non-EGU emissions reductions.

TABLE VI.C.2-1—ESTIMATED EMISSIONS REDUCTIONS (OZONE SEASON TONS), TOTAL PPB IMPROVEMENTS ACROSS ALL DOWNWIND RECEPTORS, AND COSTS

Tier	Ozone season emissions reductions (East/West)	Total PPB improvement across all downwind receptors	Annual total cost (million 2016\$) (average annual cost/ton)	Industries (# of emissions units >100 tpy in identified industries)
Tier 1 Industries with Known Controls that Cost up to \$7,500/ton.	41,153 (37,972/3,181)	4.352	\$356.6 (\$3,610)	Cement and Concrete Product Manufacturing (47) Glass and Glass Product Manufacturing (44) Iron and Steel Mills & Ferroalloy Manufacturing (39) Pipeline Transportation of Natural Gas (307).
Tier 2 Industry Boilers with Known Controls that Cost up to \$7,500/ton.	6,033 (5,965/68)	0.809	54.2 (3,744)	Basic Chemical Manufacturing (17) Petroleum and Coal Products Manufacturing (10) Pulp Paper, and Paperboard Mills (25).

TABLE VI.C.2-2—ESTIMATED EMISSIONS REDUCTIONS (OZONE SEASON TONS) BY UPWIND STATE * **

State	2019 OS NO _x emissions	OS NO _x reductions
AR	8,265	1,654
CA	14,579	1,666
IL	16,870	2,452
IN	19,604	3,175
KY	11,934	2,291
LA	35,831	6,769
MD	2,365	45
MI	18,996	2,731
MN	17,591	673
MO	9,109	3,103
MS	12,284	1,761
NJ	2,025	0
NV	2,418	0
NY	6,003	500
OH	19,729	2,790
OK	22,146	3,575
PA	15,861	3,284
TX	47,135	4,440
UT	6,276	757
VA	7,041	1,563
WI	6,571	2,150
WV	9,825	982
WY	10,335	826
Total	322,793	47,187

* In the non-EGU screening assessment, EPA estimated emissions reduction potential from the non-EGU industries and emissions units. The estimated emissions reductions by state in the table above are from the non-EGU screening assessment; for additional results from the non-EGU screening assessment, including estimated reductions by state and by industry, please see the Non-EGU Screening Assessment memorandum available in the docket.

** In the assessment, EPA used CoST to identify emissions units, emissions reductions, and associated compliance costs to evaluate the effects of potential non-EGU emissions control measures and technologies. CoST is designed to be used for illustrative control strategy analyses (e.g., NAAQS regulatory impact analyses) and not for unit-specific, detailed engineering analyses. These estimates from CoST identify proxies for (1) non-EGU emissions units that have emissions reduction potential, (2) potential controls for and emissions reductions from these emissions units, and (3) control costs from the potential controls on these emissions units. The cost estimates do not include monitoring, recordkeeping, reporting, or testing costs.

In this section, EPA provides a summary of the control technologies applied and their average costs across all of the non-EGU emissions units included in the screening assessment. This summary reflects one approach to organizing this information, which the Agency finds reasonable based on the information available for this proposal. As discussed in Section VI.B.2 of this proposed rule, the number of different industries and emissions unit categories and types present a challenge to defining a single method to identify appropriate control technologies, measures or strategies, and related costs across non-EGU emissions units.

Because of the number of industries and emissions unit types, the available information does not easily allow grouping estimated emissions reductions by cost per ton threshold for a few control technologies, measures, or strategies. Nonetheless, Table VI.C.2-3 below provides a summary of estimated reductions and average cost per ton values by control technology across all non-EGU emissions units included in the non-EGU screening assessment. The summary reflects fourteen control technologies applied by CoST across all emissions units in the non-EGU screening assessment. The average cost per ton values range from \$585 to

\$6,300 per ton, all of which are below the marginal cost per ton threshold of \$7,500 per ton. Note that the average cost per ton values are in 2016 dollars and reflect simple averages and not a percentile or other representative cost values from a distribution of cost estimates.

The Non-EGU Screening Assessment memorandum includes two other summaries of estimated reductions and average cost per ton values by technology across non-EGU emissions units. First, the memorandum includes a summary by control technology as applied across non-EGU emissions units grouped by the Tier 1 industries and

impactful boilers in Tier 2 industries, which given this further disaggregation reflects 18 control technologies across the tiers applied by CoST. Second, the

memorandum includes a summary by control technology across non-EGU emissions units grouped by the seven individual Tier 1 and 2 industries,

which given this disaggregation reflects 26 control technologies across the industries applied by CoST.

TABLE VI.C.2–3—ESTIMATED EMISSIONS REDUCTIONS (OZONE SEASON TONS), ANNUAL TOTAL COST, AND AVERAGE COST PER TON BY CONTROL TECHNOLOGY ACROSS ALL NON-EGU EMISSIONS UNITS

Control technology	Ozone season emissions reductions	Average cost per ton
Adjust Air to Fuel Ratio and Ignition Retard	212	\$2,393
Layered Combustion	12,706	5,457
Low NO _x Burner	231	3,773
Low NO _x Burner and Flue Gas Recirculation	200	4,288
Natural Gas Reburn	284	2,703
Non-Selective Catalytic Reduction	147	585
Non-Selective Catalytic Reduction or Layered Combustion	6,359	4,743
Oxygen Enriched Air Staging	52	764
SCR + DLN Combustion	136	6,301
Selective Catalytic Reduction	12,239	2,543
Selective Catalytic Reduction and Steam Injection	929	3,787
Selective Non-Catalytic Reduction	8,076	1,485
Ultra-Low NO _x Burner	1,670	2,890
Ultra-Low NO _x Burner and Selective Catalytic Reduction	3,946	4,114

Refer to the Non-EGU Screening Assessment memorandum for additional 2026 screening assessment results—including by industry and by state, estimated emissions reductions and costs, as well as by industry, emissions source groups, control technologies, number of emissions units, estimated ozone season reductions, and annual total cost.

D. Assessing Cost, EGU and Non-EGU NO_x Reductions, and Air Quality

To determine the emissions that are significantly contributing to nonattainment or interfering with maintenance, the EPA applied the multi-factor test to EGUs and non-EGUs separately, considering for each the relationship of cost, available emissions reductions, and downwind air quality impacts. Specifically, for each sector, the EPA proposes a determination regarding the appropriate level of uniform NO_x control stringency that would collectively eliminate significant contribution to downwind nonattainment and maintenance receptors. The EPA also evaluated whether the proposed rule resulted in possible over-control scenarios by evaluating if an upwind state is linked solely to downwind air quality problems that could have been resolved at a lower cost threshold, or if an upwind state could have reduced its emissions below the 1 percent air quality contribution threshold at a lower cost threshold.

1. EGU Assessment

For EGUs, the EPA examined the emissions reduction potential associated with each EGU emissions control technology (presented in Section VI.C.1 of this proposed rule) and its impact on the air quality at downwind receptors. Specifically, EPA identified and assessed the projected average air quality improvements relative to the base case and whether these improvements are sufficient to shift the status of receptors from projected nonattainment to maintenance or from maintenance to attainment. Combining these air quality factors, costs, and emissions reductions, the EPA identified a control stringency for EGUs that results in substantial air quality improvement from emissions controls that are available in the timeframe for which air quality problems at downwind receptors persist. For all affected jurisdictions, this control stringency reflects, at a minimum, the optimization of existing post-combustion controls and installation of state-of-the-art NO_x combustion controls, which are widely available at a representative marginal cost of \$1,800 per ton. EPA's evaluation also shows that the effective emissions rate performance across affected EGUs consistent with realization of these mitigation measures does not over-control upwind states' emissions relative to either the downwind air quality problems to which they are linked at Step 1 or the 1 percent contribution threshold that triggers further evaluation at Step 3 of the 4-step framework for the 2015 ozone NAAQS.

Similarly, the EPA also identified installation of new SCR post-combustion controls at coal steam sources greater than or equal to 100 MW and for a more limited portion of the oil/gas steam fleet that had higher levels of emissions as components of the required control stringency. These SCR retrofits are widely available by the 2026 ozone season at \$11,000 and \$7,700 per ton respectively. For all but 3 of the affected states (Alabama, Delaware, and Tennessee—which are no longer linked in 2026 at Steps 1 and 2 in EPA's base case air quality modeling), EPA's evaluation also shows that the effective emissions rate performance across EGUs consistent with realization of these mitigation measures does not over-control upwind states' emissions in 2026 relative to either the downwind air quality problems to which they are linked at Step 1 or the 1 percent contribution threshold that triggers further evaluation at Step 3 of the 4-step framework for the 2015 ozone NAAQS (see the Ozone Transport Policy Analysis Proposed Rule TSD for details).

To assess downwind air quality impacts for the nonattainment and maintenance receptors identified in Section V.D of this proposed rule, the EPA evaluated the air quality change at that receptor expected from the progressively more stringent upwind EGU control stringencies that were available for that time period in upwind states linked to that receptor. This assessment provides the downwind ozone improvements for consideration and provides air quality data that is

used to evaluate potential over-control situations.

To assess the air quality impacts of the various control stringencies at downwind receptors for the purposes of Step 3, the EPA evaluated changes resulting from the emissions reductions associated with the identified emissions controls in each of the upwind states, as well as assumed corresponding reductions of similar stringency in the downwind state containing the receptor to which they are linked. By applying these emissions reductions to the state containing the receptor, the EPA assumes that the downwind state will implement (if it has not already) an emissions control stringency for its sources that is comparable to the upwind control stringency identified here. Consequently, The EPA is accounting for the downwind state's share of a nonattainment or maintenance problem as a part of the over-control evaluation.¹⁸⁹

For this assessment, the EPA used an ozone air quality assessment tool (ozone AQAT) to estimate downwind changes in ozone concentrations related to upwind changes in emissions levels. The EPA focused its assessment on the years 2023 and 2026 as they pertain to the last years for which ozone season emissions data can be used for purposes of determining attainment for the

Moderate (2024) and Serious (2027) attainment dates. For each EGU emissions control technology, the EPA first evaluated the magnitude of the change in ozone concentrations at the nonattainment and maintenance receptors for each relevant year (*i.e.*, 2023 and 2026). Next, the EPA evaluated whether the estimated change in concentration would resolve the receptor's nonattainment or maintenance concern by lowering the average or maximum design values, respectively, below 71 ppb. For a complete set of estimates, see the Ozone Transport Policy Analysis Proposed Rule TSD or the ozone AQAT excel file.

For 2023, the EPA evaluated potential air quality improvements at the downwind receptors outside of California associated with available EGU emissions control technologies in that timeframe. The EPA determined for the purposes of Step 3 that the average air quality improvement at the receptors relative to the engineering analytics base case was 0.11 ppb for emissions reductions commensurate with optimization of existing SCRs/SNCRs and combustion control upgrades. The EPA determined for the purposes of Step 3 that one receptor in Clark County, Nevada switches from maintenance to attainment with these

mitigation strategies in place. Table VI.D.1–1 summarizes the results of EPA's Step 3 evaluation of air quality improvements at these receptors using AQAT.

For 2026, the EPA determined that the average air quality improvement at these receptors relative to the engineering analytics base case was 0.43 ppb for emissions reductions commensurate with optimization of existing SCRs/SNCRs, combustion control upgrades, and new post-combustion control (SCR and SNCR) retrofits at eligible units are assumed to be implemented. The EPA determined for the purposes of Step 3 that in 2026, all but one of the receptors are expected to remain nonattainment or maintenance across these control stringencies, with one receptor in Douglas County, Colorado switching from maintenance to attainment with these mitigation strategies in place.¹⁹⁰ Table VI.D.1–2 summarizes the results of EPA's Step 3 evaluation of air quality improvements at the receptors included in the AQAT analysis. For more information about how this assessment was performed and the results of the analysis for each receptor, refer to the Ozone Transport Policy Analysis Proposed Rule TSD and to the Ozone AQAT included in the docket for this rule.

TABLE VI.D.1–1—AIR QUALITY AT THE 29 RECEPTORS IN 2023 FROM EGU EMISSIONS CONTROL TECHNOLOGIES ^{a b}

Monitor ID No.	State	County	Average DV (ppb)		Max DV (ppb)	
			Baseline (engineering analysis)	SCR/SNCR optimization + LNB upgrade	Baseline (engineering analysis)	SCR/SNCR optimization + LNB upgrade
040278011	Arizona	Yuma	70.53	70.53	72.25	72.24
080350004	Colorado	Douglas	72.35	72.28	72.96	72.89
080590006	Colorado	Jefferson	73.23	73.19	73.84	73.80
080590011	Colorado	Jefferson	74.41	74.38	75.13	75.09
090010017	Connecticut	Fairfield	73.11	73.14	73.82	73.85
090013007	Connecticut	Fairfield	74.45	74.44	75.37	75.36
090019003	Connecticut	Fairfield	76.30	76.29	76.51	76.50
090099002	Connecticut	New Haven	72.11	72.07	74.16	74.12
170310001	Illinois	Cook	70.02	70.02	73.90	73.89
170310032	Illinois	Cook	70.14	70.15	72.78	72.79
170310076	Illinois	Cook	69.64	69.65	72.49	72.49
170314201	Illinois	Cook	70.19	70.18	73.75	73.74
170317002	Illinois	Cook	70.42	70.33	73.37	73.29
320030075	Nevada	Clark	70.09	70.06	71.01	70.98
420170012	Pennsylvania	Bucks	71.09	71.03	72.63	72.57
480391004	Texas	Brazoria	71.71	71.29	73.89	73.45
481210034	Texas	Denton	71.20	71.03	73.06	72.89
482010024	Texas	Harris	76.92	76.55	78.48	78.10
482010055	Texas	Harris	72.50	72.14	73.54	73.17
482011034	Texas	Harris	72.07	71.67	73.32	72.91
482011035	Texas	Harris	69.69	69.31	73.32	72.92
490110004	Utah	Davis	73.65	73.59	75.91	75.85

¹⁸⁹ For EGUs, this analysis for the Connecticut receptors shows no EGU reduction potential from the emissions reduction measures identified given that state's already low-emitting fleet; however, EGU reductions were identified in Colorado and these reductions were included in the over-control analysis.

¹⁹⁰ As in prior rules, for the purpose of defining significant contribution at Step 3, the EPA

evaluated air quality changes resulting from the application of the emissions reductions in only those states that are linked to each receptor as well as the state containing the receptor. By applying reductions to the state containing the receptor, the EPA ensures that it is accounting for the downwind state's fair share. This method holds each upwind state responsible for its fair share of the downwind problems to which it is linked. Reductions made by

other states in order to address air quality problems at other receptors do not increase or decrease this share. The air quality impacts on design values that reflect the emissions reductions in all linked states and the health and climate benefits from this proposal are discussed in Section IX of this proposed rule.

TABLE VI.D.1-1—AIR QUALITY AT THE 29 RECEPTORS IN 2023 FROM EGU EMISSIONS CONTROL TECHNOLOGIES ^{a b}—Continued

Monitor ID No.	State	County	Average DV (ppb)		Max DV (ppb)		
			Baseline (engineering analysis)	SCR/SNCR optimization + LNB upgrade	Baseline (engineering analysis)	SCR/SNCR optimization + LNB upgrade	
490353006	Utah	Salt Lake	74.35	74.29	75.99	75.93	
490353013	Utah	Salt Lake	75.27	75.21	75.78	75.72	
490570002	Utah	Weber	71.35	71.29	73.29	73.23	
490571003	Utah	Weber	71.24	71.19	72.16	72.11	
550590019	Wisconsin	Kenosha	73.17	73.07	74.09	73.99	
550590025	Wisconsin	Kenosha	69.62	69.46	72.69	72.52	
551010020	Wisconsin	Racine	71.70	71.61	73.64	73.55	
Average AQ Change Relative to Base (ppb)						0.11	
Total PPB Change Across All Receptors Relative to Base ^c						3.08	

Table Notes:

^a These results reflect the inclusion of all identified LNB upgrade potential. Some of which will be implemented in 2023 state emissions budgets, and some be implemented in 2024 state emissions budgets (for those states not included in the Revised CSAPR Update).

^b The EPA notes that the design values reflected in tables VI.D.1-1 and 2 correspond to the engineering analysis EGU emissions inventory that was used in AQAT to determine state-level baseline emissions and reductions at Step 3. These tools are discussed in greater detail in the Ozone Transport Policy Analysis Proposed Rule TSD.

^c The cumulative ppb change only shows the aggregate change across all problematic receptors (some of which are located within close proximity to one another) in this part of the Step 3 analysis. Section IX of this proposed rule provides a more complete picture of the air quality impacts of the proposed rule.

TABLE VI.D.1-2—AIR QUALITY AT RECEPTORS IN 2026 FROM EGU EMISSIONS CONTROL TECHNOLOGIES

Monitor ID No.	State	County	Average DV (ppb)		Max DV (ppb)		
			Baseline (engineering analysis)	SCR/SNCR optimization + LNB upgrade + SCR/SNCR retrofit	Baseline (engineering analysis)	SCR/SNCR optimization + LNB upgrade + SCR/SNCR retrofit	
40278011	Arizona	Yuma	70.11	70.09	71.81	71.79	
80350004	Colorado	Douglas	70.94	70.23	71.55	70.83	
80590006	Colorado	Jefferson	72.09	71.42	72.69	72.02	
80590011	Colorado	Jefferson	72.97	72.32	73.68	73.02	
90010017	Connecticut	Fairfield	71.60	71.52	72.30	72.22	
90013007	Connecticut	Fairfield	73.09	72.84	73.99	73.74	
90019003	Connecticut	Fairfield	74.83	74.63	75.03	74.83	
90099002	Connecticut	New Haven	70.77	70.51	72.78	72.51	
170310001	Illinois	Cook	69.05	68.96	72.87	72.77	
170310032	Illinois	Cook	69.37	69.32	71.98	71.93	
170310076	Illinois	Cook	68.75	68.71	71.56	71.52	
170314201	Illinois	Cook	69.10	69.02	72.61	72.53	
170317002	Illinois	Cook	69.36	69.18	72.27	72.09	
480391004	Texas	Brazoria	70.93	69.35	73.09	71.46	
482010024	Texas	Harris	76.28	74.77	77.82	76.28	
490110004	Utah	Davis	72.20	71.61	74.42	73.81	
490353006	Utah	Salt Lake	73.00	72.40	74.61	74.00	
490353013	Utah	Salt Lake	74.10	73.45	74.60	73.95	
490570002	Utah	Weber	70.30	69.74	72.22	71.64	
550590019	Wisconsin	Kenosha	72.01	71.80	72.91	72.70	
550590025	Wisconsin	Kenosha	68.46	68.19	71.48	71.19	
551010020	Wisconsin	Racine	70.52	70.33	72.42	72.24	
Average AQ Change Relative to Base (ppb)						0.43	
Total PPB Change Across All Receptors Relative to Base (ppb)						9.42	

Figures 1 and 2 to Section VI.D.1, included in Appendix G of the Ozone Transport Policy Analysis Proposed Rule TSD available in the docket for this rulemaking, illustrate the air quality improvement relative to the estimated representative cost associated with the previously identified emissions control technologies. The graphs show improving air quality at the downwind receptors as emissions reductions commensurate with the identified control technologies are assumed to be

implemented. Figure 1 to Section VI.D.1 ¹⁹¹ reflects emissions reductions commensurate with optimization of existing SNCRs and SCRs. Figure 2 to Section VI.D.1 ¹⁹² reflects emissions reductions commensurate with installation of new post combustion

¹⁹¹ Included in Appendix G of the Ozone Transport Policy Analysis Proposed Rule TSD, which is available in the docket for this rulemaking.

¹⁹² Included in Appendix G of the Ozone Transport Policy Analysis Proposed Rule TSD, which is available in the docket for this rulemaking.

controls (mainly SCRs) layered on top of the emissions reduction potential from the technologies represented in Figure 1 to Section VI.D.1. ¹⁹³ The graphic, and underlying AQAT receptor-by-receptor analysis demonstrates that air quality continues to improve at downwind receptors as EPA examines increasingly stringent EGU NO_x control

¹⁹³ Included in Appendix G of the Ozone Transport Policy Analysis Proposed Rule TSD, which is available in the docket for this rulemaking.

technologies. While all major technology breakpoints identified in Sections VI.B and VI.C of this proposed rule show continued air quality improvements at problematic receptors and at cost and technology choice levels that are commensurate with mitigation strategies that are proven to be widely available and implemented, EPA's quantification and application of those breakpoints reflect certain exclusions to: (1) Preserve this consistency with widely observed mitigation measures in states, and (2) remove any retrofit assumptions at marginal units that would have much higher dollar per ton representative cost and little or no air quality benefit. For instance, the EPA does not define the SCR retrofit breakpoint (\$11,000 per ton) to include retrofit application at steam units less than 100 MW or at oil/gas steam units emitting at less than 150 tons per ozone season. The emissions reductions from these potential categories of measures are small and do not constitute additional "breakpoints" in EPA's estimation. They would entail much higher dollar per ton costs, going beyond what is widely observed in the fleet. This careful calibration of technology breakpoints through exclusion of measures that are clearly not cost-effective in terms of air quality benefit allows for the identification of an EGU strategy that is an appropriate reflection of those readily available and widely implemented emissions reduction strategies that will have meaningful downwind air quality impact.

Moreover, these technologies (and representative cost) are demonstrated ozone pollution mitigation strategies that are widely practiced across the EGU fleet and are of comparable stringency to emissions reduction measures that many downwind states have already instituted. The coal SCR retrofit measures driving the majority of the emissions reductions in this action not only reflect industry best practice, but they also reflect prevailing practice among EGUs. More than 60% of the existing coal capacity already has this technology in place. For nearly 25 years, all new coal-fired EGUs that commenced construction have had SCR (or equivalent emissions rates). The 1997 proposed amendments to subpart Da revised the NO_x standard based on the use of SCR. The NO_x SIP Call (promulgated in 1998) established emissions reduction requirements premised on extensive SCR installation (142 units) and incentivized well over 40 GWs of SCR retrofit in the ensuing

years.¹⁹⁴ Similarly, the Clean Air Interstate Rule established emissions reductions requirements in 2006 that assumed another 58 units (15 GW) would be installed in the ensuing years among just 10 states, and an even greater volume of capacity chose SCR retrofit measures in the wake of finalizing that action.¹⁹⁵

Basing emission reduction requirements for EGUs on SCR retrofits is also consistent with regulatory approaches adopted by states, which—particularly in downwind areas more impacted by ozone transport contribution from upwind state emissions—have already adopted SCR-based standards as part of stringent NO_x control programs. Regulatory programs that impose stringent Reasonably Available Control Technology (RACT) requirements on all major power plants and Lowest Achievable Emission Rate (LAER) standards on all new major sources of NO_x have resulted in remaining coal sources in states along the Northeast Corridor such as Connecticut, Delaware, New Jersey, New York, and Massachusetts all being retrofitted with SCR.¹⁹⁶ The Maryland Code of Regulations requires coal fired sources to operate existing SCR controls or install SCR controls by specified dates.¹⁹⁷ Programs like North Carolina's Clean Smokestacks Act and Colorado's Clean Air, Clean Jobs Act have also required or prompted SCR retrofits on units.¹⁹⁸ Unit-level Best Available Retrofit Technology (BART) requirements for the first Regional Haze planning period also determined SCR retrofits (and corresponding emissions rates) were cost-effective controls for a variety of sources in the U.S.¹⁹⁹

As shown in Figure 1 to Section VI.D.1,²⁰⁰ the majority of EGU emissions reduction potential and associated air quality improvements estimated for 2023 occurs from optimization of existing SCRs, with some additional reductions from installation of state-of-the-art combustion controls at the same representative cost threshold. At the slightly higher representative cost

threshold of \$1,800 per ton, there is some additional air quality improvement from optimization of existing SNCRs. These measures taken together represent the control stringency at which near-term incremental EGU NO_x reduction potential and corresponding downwind ozone air quality improvements are maximized. This evaluation shows that EGU NO_x reductions for each of the near-term emissions control technologies are available at reasonable cost and that these reductions provide meaningful improvements in downwind ozone concentrations at the identified nonattainment and maintenance receptors. Figure 1 to Section VI.D.1²⁰¹ highlights (1) the continuous connection between identified emission reduction potential and downwind air quality improvement across the range of near-term mitigation measures assessed, and (2) the cost-effective availability of these reductions and corresponding air quality improvements.

Additional considerations that are unique to EGUs provide additional support for EPA's proposal to include SCR and SNCR optimization as part of the identified near-term control stringency, including:

- These controls are already installed and available for operation on these units;
- they are on average already partially operating, but not necessarily optimized;
- the reductions are available in the near-term (during ozone seasons when the problematic receptors are projected to persist), including by the 2023 ozone season aligned with the Moderate area attainment date; and
- these sources are already covered under the existing CSAPR NO_x Ozone Season Group 2 or Group 3 Trading Programs or the Acid Rain Program and thus have the monitoring, reporting, recordkeeping, and all other necessary elements of compliance with the trading program already in place.

The majority of emissions reduction potential and associated air quality improvements estimated for 2026 occur from retrofitting uncontrolled steam sources with post-combustion controls. At the representative cost threshold of \$11,000 per ton, there are significant additional air quality improvements from emissions reductions commensurate with installation of new SCRs and SNCRs. These measures taken together with the near-term emissions reduction measures described

¹⁹⁴ 63 FR 57448.

¹⁹⁵ 71 FR 25345.

¹⁹⁶ EPA-HQ-OAR-2020-0272. Comment letter from Attorneys General of NY, NJ, CT, DE, MA.

¹⁹⁷ COMAR 26.11.38 (control of NO_x Emissions from Coal-Fired Electric Generating Units).

¹⁹⁸ <https://www.epa.gov/system/files/documents/2021-09/table-3-30-state-power-sector-regulations-included-in-epa-platform-v6-summer-2021-refe.pdf>.

¹⁹⁹ See table 3–35 BART regulations in EPA IPM documentation available at <https://www.epa.gov/airmarkets/documentation-epas-power-sector-modeling-platform-v6-summer-2021-reference-case>.

²⁰⁰ Included in Appendix G of the Ozone Transport Policy Analysis Proposed Rule TSD, which is available in the docket for this rulemaking.

²⁰¹ Included in Appendix G of the Ozone Transport Policy Analysis Proposed Rule TSD, which is available in the docket for this rulemaking.

previously represent the level of control stringency in 2026 at which incremental EGU NO_x reduction potential and corresponding downwind ozone air quality improvements are maximized. This evaluation shows that EGU NO_x reductions for each of the emissions control technologies are available at reasonable cost and that these reductions can provide improvements in downwind ozone concentrations at the identified nonattainment and maintenance receptors.

The EPA finds that the control stringency that reflects optimization of existing SCRs and SNCRs, installation of state-of-the-art combustion controls, and the retrofitting of new post combustion controls at the coal and oil/gas steam capacity described previously results in nearly 90,000 tons of NO_x reduction (approximately 43 percent of the 2026 baseline level) for the 22 linked states in 2026 subject to a FIP for EGUs, which will deliver notable air quality improvements across all transport-impacted receptors and assist in fully resolving one downwind air quality problem for the 2015 ozone NAAQS. Figure 2 to Section VI.D.1²⁰² demonstrates the continuous connection between identified emissions reduction potential and downwind air quality improvement across the range of mitigation measures assessed in 2026. At no point do the additional emission mitigation measures examined here fail to produce corresponding downwind air quality improvements.

The EPA is proposing that emissions reductions commensurate with the full operation of all existing post-combustion controls (both SCRs and SNCRs) and state-of-the-art combustion control upgrades constitute the Agency's selected control stringency for EGUs for those states linked to downwind nonattainment or maintenance in 2023. For those states also linked in 2026, the EPA is determining that the appropriate EGU control stringency also includes emissions reductions commensurate with the retrofit of SCR at coal steam units of 100 MW or greater capacity (excepting circulating fluidized bed units), new SNCR on coal steam units of less than 100 MW capacity and circulating fluidized bed units, and SCR on oil/gas steam units greater than 100 MW that have historically emitted at least 150 tons of NO_x per ozone season.

As noted previously in Section VI.B of this proposed rule and in the EGU NO_x Mitigation Strategies Proposed Rule

TSD, the EPA considered other methods of identifying mitigation measures (e.g., SCRs on smaller units, combustion control upgrades on combustion turbines, SCRs on combustion turbines). The emission reductions from these potential categories of measures do not constitute additional "technology breakpoints" in EPA's estimation, but rather reflect a different tier of assessment where further mitigation measures are based on inclusion of smaller and/or different generator type of unit (rather than pollution control technology). Emissions reductions from these measures are relatively small and would entail much higher dollar per ton costs, going beyond what is widely observed in the fleet. Although these additional measures are not included in EPA's technology breakpoint analysis discussed above, the EPA did examine the cost, potential reductions, and air quality impact of these additional measures in a supplemental analysis to affirm that they do not merit inclusion in the proposed stringency for this action. Similar to prior rules, there is a notable "knee-in-the-curve" breakpoint if these additional measures are included in EPA's analysis. In other words, there are very little additional emissions reductions and air quality improvement at problematic receptors, and the cost associated with these measures increases substantially on a dollar per ton basis. The graphic below illustrates the significant loss in cost-effectiveness of reductions if these measures had been included in EPA's proposed stringency.²⁰³

This proposed determination regarding the appropriate level of control stringency for EGUs to eliminate significant contribution from upwind states finds that the amounts of NO_x emissions reduction achieved through these strategies at EGUs are necessary and cost-justified under the Step 3 multifactor analysis for as long as the strategies remain available to the sources. In other words, the EPA finds

²⁰³This is not to discount the potential effectiveness of these or other NO_x mitigation strategies outside the context of this rulemaking to address regional ozone transport on a nationwide basis. States and local jurisdictions may find such measures particularly impactful or necessary in the context of local attainment planning or other unique circumstances. Further, while the EPA proposes this rule as a complete remedy to the problem of interstate transport for the 2015 ozone NAAQS, the EPA has in the past recognized that circumstances may arise after the promulgation of remedies under CAA section 110(a)(2)(D)(i)(I) in which the exercise of further remedial authority against specific stationary sources or groups of sources under CAA section 126 may be warranted. See Response to Clean Air Act Section 126(b) Petition From Delaware and Maryland, 83 FR 50444, 50453–54 (Oct. 5, 2018).

at Step 3 that so long as the identified NO_x emissions reduction controls are available and can be implemented (such as optimization of SCRs), they must be implemented, even as total NO_x emissions reductions on a mass basis decline. EPA's Step 3 finding is *not* limited to a determination of the mass-based reduction in emissions that the EPA determines is achievable for the covered EGU fleet under current operating conditions. Rather, the EPA finds at Step 3 that EGUs must continue to achieve NO_x emissions performance in the ozone season commensurate with the level of emissions control stringency the EPA determines appropriate under the multifactor test as set forth in this section. The stringency of the emissions budgets would simply reflect the stringency of the emissions control strategies and would do so more consistently over time than EPA's previous approach of computing emissions budgets for all future control periods at the time of the rulemaking. This retention of a constant degree of stringency over time in emissions budgets under a flexible trading program would not constitute over-control any more than the permanent imposition of emissions rate standards on individual sources at the time of the rulemaking would constitute over-control.

EPA acknowledges that this is an adjustment in its historical approach to eliminating significant contribution, although it is consistent with the evolution of the Agency's thinking as set forth in the Revised CSAPR Update. In CSAPR and the CSAPR Update, EPA established static budgets at Step 4 based on the selected level of control stringency at Step 3. EPA's experience with this approach has been that while the initial mass-based budgets are achieved and compliance targets are even exceeded, this leads to a loss in efficacy of the program as the incentive to reduce emissions declines over time. Some sources emit at higher levels or relax their operation of NO_x controls in response to the build-up of allowances available for compliance, even though EPA has concluded those controls are necessary to meet the statutory good neighbor requirements. This result is inconsistent with the statutory mandate to "prohibit" significant contribution and interference with maintenance of the NAAQS in other states, as evidenced most clearly in CAA section 126, which makes it unlawful for a source "to operate more than three months after [a finding that the source emits or would emit in violation of the good neighbor provision] has been made with respect

²⁰²Included in Appendix G of the Ozone Transport Policy Analysis Proposed Rule TSD, which is available in the docket for this rulemaking.

to it.” 42 U.S.C. 7426(c)(2) (emphasis added). Moreover, there is no policy justification at Step 3 for an upwind source to relax or cease operating its emissions controls simply because other sources of pollution have been reduced. In the Revised CSAPR Update, the EPA began to address this problem by establishing adjusted emissions budgets for each year from 2021 through 2025 based on information about the changing EGU fleet known at the time of promulgation of the rule. See 86 FR 23118. As discussed in Section VII.B of this proposed rule, the EPA is now implementing a more complete approach to eliminating significant contribution by imposing dynamic budget updates and banking restrictions to ensure that its selected control stringency at Step 3 continues to be implemented.

This approach at Step 4 is wholly consistent with EPA’s findings at Step 3. This is best illustrated by comparing the trading program approach with the requirements the EPA could promulgate for EGUs based on an approach of assigning unit-specific emissions rate limitations. Under the latter approach, the EPA would assign an enforceable

emissions rate to each EGU, based on the operation of the selected NO_x control strategy (e.g., optimizing existing SCRs) that would apply in perpetuity. By continually adjusting budgets to ensure that emissions outcomes are achieved—and downwind air quality benefits are delivered—that are commensurate with the continuous operation of emissions controls at the selected control stringency at Step 3, the EPA is better aligning the implementation of the program at Step 4 with the level of emissions reductions from upwind sources that the EPA has determined is appropriate through the Step 3 multifactor analysis.²⁰⁴ The EPA requests comment on its identified EGU control stringencies, including its consideration of the cost, air quality impacts, and timing of such mitigation strategies.

2. Non-EGU Assessment

The Agency prepared the non-EGU screening assessment for 2026 using the analytical framework detailed in Section VI.B.2 of this proposed rule. Using a \$7,500/ton (in 2016 dollars) marginal cost threshold identified in the framework, the screening assessment used CoST with known controls, the

CMDB, and the 2019 emissions inventory and estimated emissions reductions from emissions units in the Tier 1 industries and impactful boilers in the Tier 2 industries.

Using 2026 as the potential earliest date by which controls on emissions units in the Tier 1 industries and impactful boilers in the Tier 2 industries could be installed, the EPA assessed whether these emissions reduction controls should be required at Step 3 under its multi-factor test.

The EPA determined that, for 2026, the average air quality improvement at receptors relative to the EGU case when SCR post-combustion controls were installed was 0.18 ppb when Tier 1 non-EGU controls were applied and an additional 0.04 ppb when Tier 2 non-EGU controls were applied, based on the Step 3 analysis. The EPA determined for the purposes of Step 3 that all but 3 receptors remain nonattainment or maintenance after the application of these controls, with two receptors (one in Brazoria County, Texas and one in Kenosha County, Wisconsin) switching from maintenance to attainment with these non-EGU controls in place.

TABLE VI.D.2–2—AIR QUALITY AT RECEPTORS IN 2026 FROM NON-EGU INDUSTRIES

Monitor ID No.	State	County	Average DV (ppb)		Max DV (ppb)		
			Baseline (engineering analysis)	EGU SCR/SNCR optimization + LNB upgrade + SCR/SNCR retrofit + non-EGU Tier 1 + Tier 2	Baseline (engineering analysis)	EGU SCR/SNCR optimization + LNB upgrade + SCR/SNCR retrofit + non-EGU Tier 1 + Tier 2	
40278011	Arizona	Yuma	70.11	70.06	71.81	71.76	
80350004	Colorado	Douglas	70.94	70.07	71.55	70.67	
80590006	Colorado	Jefferson	72.09	71.26	72.69	71.86	
80590011	Colorado	Jefferson	72.97	72.16	73.68	72.86	
90010017	Connecticut	Fairfield	71.60	71.35	72.30	72.04	
90013007	Connecticut	Fairfield	73.09	72.54	73.99	73.43	
90019003	Connecticut	Fairfield	74.83	74.40	75.03	74.59	
90099002	Connecticut	New Haven	70.77	70.22	72.78	72.21	
170310001	Illinois	Cook	69.05	68.73	72.87	72.53	
170310032	Illinois	Cook	69.37	69.20	71.98	71.80	
170310076	Illinois	Cook	68.75	68.51	71.56	71.31	
170314201	Illinois	Cook	69.10	68.83	72.61	72.32	
170317002	Illinois	Cook	69.36	68.98	72.27	71.88	
480391004	Texas	Brazoria	70.93	68.72	73.09	70.81	
482010024	Texas	Harris	76.28	74.23	77.82	75.73	
490110004	Utah	Davis	72.20	71.51	74.42	73.70	
490353006	Utah	Salt Lake	73.00	72.30	74.61	73.90	
490353013	Utah	Salt Lake	74.10	73.34	74.60	73.84	
490570002	Utah	Weber	70.30	69.63	72.22	71.53	
550590019	Wisconsin	Kenosha	72.01	71.57	72.91	72.47	
550590025	Wisconsin	Kenosha	68.46	67.95	71.48	70.95	
551010020	Wisconsin	Racine	70.52	70.12	72.42	72.02	
Average AQ Change Relative to Base (ppb)						0.64	

²⁰⁴ The EPA does not believe this adjustment in its Step 3 approach for EGUs, or its corresponding improved approach to the trading program at Step 4—which, again, mimics the effect of permanent

and enforceable unit-specific emissions limits—violates the prohibition on over-control. Our over-control analysis is set forth below in Section VI.D of this proposed rule, and the EPA proposes to find

that there is no over-control at the proposed stringency (for both EGUs and non-EGUs) in any upwind state.

TABLE VI.D.2-2—AIR QUALITY AT RECEPTORS IN 2026 FROM NON-EGU INDUSTRIES—Continued

Monitor ID No.	State	County	Average DV (ppb)		Max DV (ppb)	
			Baseline (engineering analysis)	EGU SCR/SNCR optimization + LNB upgrade + SCR/SNCR retrofit + non-EGU Tier 1 + Tier 2	Baseline (engineering analysis)	EGU SCR/SNCR optimization + LNB upgrade + SCR/SNCR retrofit + non-EGU Tier 1 + Tier 2
Total PPB Change Across All Receptors Relative to Base (ppb)						14.13

For more information about how this assessment was performed and the results of the analysis for each receptor, refer to the Ozone Transport Policy Analysis Proposed Rule TSD and to the Ozone AQAT included in the docket for this rule.

a. Request for Comment on Non-EGU Control Strategies and Measures

In the non-EGU screening assessment, the EPA used CoST, the CMDDB, and the 2019 emissions inventory to assess emissions reduction potential from non-EGU emissions units in several industries. The EPA identified emissions units that were uncontrolled or that could be better controlled and then applied control technologies to estimate emissions reductions and costs. As noted previously, the cost estimates do not include monitoring, recordkeeping, reporting, or testing costs. Based on the available information, the EPA is proposing to require implementation of the non-EGU emissions reductions at Step 3 by the beginning of the 2026 ozone season. The EPA discusses the basis for this proposed compliance schedule in Section VII.A.2 of this proposed rule.

The EPA requests comment on certain estimates and assumptions in this proposal that may affect EPA’s evaluation of the capital and annual costs of several potential control technologies. In particular, the EPA requests comment on whether ultra-low

NO_x burners or low NO_x burners are generally considered part of the process or add-on controls for ICI boilers (and how process changes or retrofits to accommodate controls would affect the cost estimates). We request comment on our estimates regarding the effectiveness of low emissions combustion in controlling NO_x from RICE compared to other potential NO_x controls for these engines. We request comment on whether controls on ICI boilers and reciprocating IC engines are likely to be run all year (e.g., 8,760 hours/year) or only during the ozone season.

The EPA notes that the non-EGU NO_x mitigation strategy in this proposed rule focuses on obtaining emissions reductions from non-EGU units that were quantitatively determined to have the most significant impacts on air quality improvements at the downwind nonattainment and maintenance receptors. However, the EPA requests comment on the merits of requiring non-EGU sources within the linked upwind states to meet specified technology-based control standards, such as the RACT SIP requirements outlined in CFR part 51 for non-EGU sources located in OTR states.

3. Combined EGU and Non-EGU Assessment

The EPA used the Ozone AQAT to evaluate the combined impact of these selected stringency levels for both EGUs and non-EGUs on all receptors

remaining in the 2026 air quality modeling base case to inform the over-control analysis. EPA’s evaluation demonstrated air quality improvement at the 22 remaining nonattainment or maintenance receptors outside of California (see Section V.D of this proposed rule for receptor details). The EPA estimated that the average air quality improvement at these receptors relative to the engineering analytics base case was 0.64 ppb for emissions reductions commensurate with optimization of existing SCR/SNCRs, combustion control upgrades, application of new post-combustion control (SCR and SNCR) retrofits at eligible units, and all estimated emissions reductions from the Tier 1 industries and impactful boilers in the Tier 2 industries. Table VI.D.1-3 summarizes the results of EPA’s Step 3 evaluation of air quality improvements at these receptors using AQAT. In summary, the collective application of these mitigation measures and emissions reductions continue to deliver downwind air quality improvements up until the most stringent thresholds identified. The health and climate benefits resulting from application of these measures (as described in the RIA) are estimated to exceed the costs, and the identified technologies reflect not only demonstrated best practices—but widely adopted best practices in the case of EGU retrofits.

TABLE VI.D.3-1—CHANGE IN AIR QUALITY REDUCTIONS AT RECEPTORS IN 2026 FROM PROPOSED EGU AND NON-EGU EMISSIONS REDUCTIONS^{a b c}

Tier/technology	Ozone season emissions reductions	Total PPB change across all downwind receptors ^d	Average PPB change across all downwind receptors
EGU (SCR/SNCR optimization + LNB upgrade) + Gen shifting	26,250	1.53	0.07
EGU SCR/SNCR Retrofit + Gen shifting	63,883	7.89	0.36
Non-EGU (Tier 1)	41,153	3.89	0.18
Non-EGU (Tier 2)	6,033	0.82	0.04
Total		14.13	0.64

Table Notes:

^a As in prior rules, for the purpose of defining significant contribution at Step 3, the EPA evaluated air quality changes resulting from the application of the emissions reductions in only those states that are linked to each receptor as well as the state containing the receptor. By applying reductions to the state containing the receptor, the EPA ensures that it is accounting for the downwind state's fair share. In addition, this method holds each upwind state responsible for its fair share of the downwind problems to which it is linked. Reductions made by other states in order to address air quality problems at other receptors do not increase or decrease this share. The air quality impacts on design values that reflect the emissions reductions in all linked states and the health and climate benefits from this proposal are discussed in Section IX of this proposed rule.

^b The EPA notes that the design values reflected in Tables VI.D.1–1 and 2 correspond to the engineering analysis EGU emissions inventory used in AQAT to determine state-level baseline emissions and reductions at Step 3. These tools are discussed in greater detail in the Ozone Transport Policy Analysis Proposed Rule TSD. Additionally, these emission reduction values vary slightly from the technology reduction estimates described in Section VI.C, as the values here reflect (1) the sum of the final identified stringency for each state (*e.g.*, SCR retrofit potential is not assumed in Alabama, Delaware, and Tennessee), and (2) generation shifting reduction potential identified at each step.

^c The total and average ppb results from non-EGUs emissions reductions shown here were generated using the Step 3 AQAT methodology consistent with that for EGUs (*i.e.*, including reductions from the state containing the receptor and excluding states that are not explicitly linked to particular receptors). The values shown in Table VI.C.2–1 were prepared for the non-EGU screening assessment using a methodology where states within the program make emissions reductions for all receptors. States that contain receptors (*i.e.*, Connecticut and Colorado) that are not linked to other receptors are not assumed to make reductions under that methodology.

^d The cumulative ppb change only shows the aggregate change across all problematic receptors (some of which are located within close proximity to one another) in this part of the Step 3 analysis. Section IX of this proposed rule provides a more complete picture of the air quality impacts of the proposed rule.

4. Over-Control Analysis

The EPA applied its over-control test to this same set of aggregated EGU and non-EGU data described in the previous section. As part of the air quality analysis using the Ozone AQAT, the EPA evaluated potential over-control with respect to whether (1) the expected ozone improvements would be greater than necessary to resolve the downwind ozone pollution problem (*i.e.*, beyond what is necessary to resolve all nonattainment and maintenance problems to which an upwind state is linked) or (2) the expected ozone improvements would reduce the upwind state's ozone contributions below the screening threshold (*i.e.*, 1 percent of the 2015 ozone NAAQS).

In *EME Homer City*, the Supreme Court held that the EPA cannot “require[] an upwind State to reduce emissions by more than the amount necessary to achieve attainment in every downwind State to which it is linked.” 572 U.S. at 521. On remand from the Supreme Court, the D.C. Circuit held that this means that the EPA might overstep its authority “when those downwind locations would achieve attainment even if less stringent emissions limits were imposed on the upwind States linked to those locations.” *EME Homer City II*, 795 F.3d at 127. The D.C. Circuit qualified this statement by noting that this “does not mean that every such upwind state would then be entitled to less stringent emissions limits. Some of those upwind States may still be subject to the more stringent emissions limits so as not to cause other downwind locations to which those States are linked to fall into nonattainment.” *Id.* at 14–15. As the Supreme Court explained, “while EPA has a statutory duty to avoid over-control, the Agency also has a statutory obligation to avoid ‘under-control,’ *i.e.*, to maximize achievement of attainment downwind.” 572 U.S. at 523. The Court noted that “a degree of imprecision is

inevitable in tackling the problem of interstate air pollution” and that incidental over-control may be unavoidable. *Id.* “Required to balance the possibilities of under-control and over-control, EPA must have leeway in fulfilling its statutory mandate.” *Id.*²⁰⁵

Consistent with these instructions from the Supreme Court and the D.C. Circuit, using the Ozone AQAT, the EPA first evaluated whether reductions resulting from the selected control stringencies for EGUs in 2023 and 2026 combined with the emissions reductions selected for non-EGUs in 2026 can be anticipated to resolve any downwind nonattainment or maintenance problems (see the Ozone Policy Analysis Proposed Rule TSD for details on the construction and application of AQAT). The control stringency selected for 2023 (a representative cost threshold of \$1,800 per ton for EGUs) includes emissions reductions commensurate with optimization of existing SCRs and SNCRs and installation of state-of-the-art combustion controls, which are estimated to change the status of one maintenance receptor, shifting the Clark County, Nevada monitor to attainment in 2023. However, no other nonattainment or maintenance problems would be resolved in 2023 with this level of stringency, and no state is linked solely to this receptor. Nor do any states' contribution levels drop below the 1% of NAAQS threshold. Thus, the EPA determined that none of the 26 linked states have all of their linkages resolved at the proposed EGU level of control stringency in 2023, and

²⁰⁵ Although the Court described over-control as going beyond what is needed to address “nonattainment” problems, the EPA interprets this holding as not impacting its approach to defining and addressing both nonattainment and maintenance receptors. In particular, the EPA continues to interpret the Good Neighbor provision as requiring it to give independent effect to the “interfere with maintenance” prong. *Accord Wisconsin*, 938 F.3d at 325–27.

hence, the EPA finds no over-control in the proposed level of stringency.

Based on the air quality baseline modeling for 2026, all receptors to which Alabama, Delaware, and Tennessee are linked in 2023 are projected to be in attainment in 2026. Therefore, no additional emissions reductions are proposed for EGUs or non-EGUs in those states beyond the 2023 level of stringency. For the remaining 23 states, the selected control stringency (at a representative cost per ton threshold of \$11,000 for EGUs and a marginal cost threshold of \$7,500 for non-EGUs) beginning in 2026 includes additional EGU controls and estimated non-EGU emissions reductions for Tier 1 and Tier 2 non-EGU industries. The EPA used the Ozone AQAT to evaluate the impact of this selected stringency level (as well as other potential stringency levels) on all receptors remaining in the 2026 air quality modeling base case. This assessment shows that the selected control stringency level and emissions reductions are estimated to change the status of three maintenance receptors to attainment in 2026—Douglas County, Colorado; Brazoria County, Texas; and Kenosha County, Wisconsin. Based on these data, EPA proposes that at least 20 of the 23 states continue to be linked to nonattainment or maintenance receptors after implementation of all identified Step 3 reductions, and hence, the EPA finds no over-control in its determination of that level of stringency for those 20 states.

For 2 of the 23 states, Arkansas and Mississippi, the last downwind receptor to which these two states are linked (*i.e.*, Brazoria County, Texas) is estimated to achieve attainment and maintenance after full application of EGU reductions and Tier 1 non-EGU reductions. This suggests application of the estimated non-EGU emissions reductions from Tier 2 may constitute over-control for these states. However, this downwind

receptor only resolves by a small margin after the application of all EGU and Tier 1 non-EGU emissions reductions. The EPA anticipates that updates to emissions inventories, emissions reduction potential from identified technologies, or the over-control test methodology resulting from comments or other updated information could possibly move this site back into nonattainment- or maintenance-receptor status when the EPA conducts an over-control analysis prior to finalizing this proposal.

For 1 of the 23 states, Wyoming, the EPA also notes a potential over-control finding under the methodological assumption where emissions reductions of commensurate stringency are assumed in the downwind state of Colorado (which is not subject to this proposal). As demonstrated in the Ozone Transport Policy Analysis Proposed Rule TSD, the last downwind receptor for Wyoming (*i.e.*, Douglas County, Colorado) is estimated to achieve attainment and maintenance after full application of EGU reductions. This suggests application of estimated non-EGU emissions reductions from Tier 1 and Tier 2 industries may constitute over-control for this state. However, when the assumption of commensurate downwind state reductions in Colorado is removed from the methodology, the downwind receptor to which Wyoming is linked does not resolve and there is no identified over-control estimated for Wyoming.²⁰⁶

Next, the EPA evaluated the potential for over-control with respect to the 1 percent of the NAAQS threshold applied in this proposed rulemaking at

²⁰⁶ In this proposal, the EPA continues to assume, as it has in prior transport rules, that home-states (that are not otherwise linked) will make similar reductions as those assumed in this action for purposes of local attainment. While the EPA continues to view this to be an equitable means of assessing air quality improvement from good neighbor actions, because the downwind receptor state is assumed to do its “fair share,” the EPA recognizes that recent case law has called the need for such an assumption into question, and thus using this assumption as a basis for finding over-control may be inappropriate. In *Maryland*, the EPA had argued that good neighbor obligations should not be required by the Marginal area attainment deadline in part because “marginal nonattainment areas often achieve the NAAQS without further downwind reductions, so it would be unreasonable to impose reductions on upwind sources based on the next marginal attainment deadline.” 958 F.3d 1185, 1204. The D.C. Circuit rejected that argument, noting regulatory consequences for the downwind state for failure to attain even at the Marginal date, and, citing *Wisconsin*, the court held that upwind sources violate the good neighbor provision if they significantly contribute even at the Marginal area attainment date. *Id.* Thus, the EPA examines over-control in this proposal with and without this assumption of home-state emission reductions.

Step 3 of the good neighbor framework, assessed for the selected control stringencies for each state for each period that downwind nonattainment and maintenance problems persist (*i.e.*, 2023 and 2026). Specifically, the EPA evaluated whether the selected control stringencies would reduce upwind emissions to a level where the contribution from any of the 26 linked states in 2023 or 23 linked states in 2026 would be below the 1 percent threshold. The EPA finds that for the mitigation measures assumed in 2023 and in 2026, all states that contributed greater than or equal to the 1 percent threshold in the base case continued to contribute greater than or equal to 1 percent of the NAAQS to at least one remaining downwind nonattainment or maintenance receptor for as long as that receptor remained in nonattainment or maintenance. In the case of Arkansas, Mississippi, and Wyoming, while their linkages resolved based on a change in receptor status at Step 1 (as discussed above), their contribution to the relevant monitoring sites remained above 1 percent of the NAAQS, and thus, the potential basis for an over-control finding with respect to these states is not based on their contribution dropping below 1 percent of the NAAQS at those sites. For more information about this assessment, refer to the Ozone Transport Policy Analysis Proposed Rule TSD and the Ozone AQAT.

Based on these results, under no scenario does EPA’s AQAT analysis for this proposal indicate that including all identified EGU reductions would constitute over-control. Rather, if these results hold for a final rule, the potential over-control for Arkansas and Mississippi can be avoided by not requiring Tier 2 non-EGU reductions, and over-control for Wyoming can be avoided by not requiring any non-EGU reductions.

Nonetheless, while acknowledging these preliminary analytic results, the EPA is proposing that all of the selected EGU and non-EGU NO_x reduction strategies selected in EPA’s Step 3 analysis be applied to all linked states in 2026—including to Arkansas, Mississippi, and Wyoming—to eliminate significant contribution to nonattainment and interference with maintenance of the 2015 ozone NAAQS. The Supreme Court has directed the EPA to avoid both over-control and under-control in addressing good neighbor obligations. In addition, the D.C. Circuit has reinforced that over-control must be established based on particularized, record evidence on an as-applied basis. As noted previously,

even slight changes in analytics based on comments or new information between proposal and final could result in the Brazoria, Texas site remaining either a nonattainment or maintenance receptor. Further, with respect to Wyoming, its linkage only resolves based on an unenforceable assumption regarding a certain level of emissions reduction in Colorado. The proposed determination that the stringency of this proposal does not constitute over-control for any linked state is further reinforced by EPA’s observation in Section IV.A.1 of this proposed rule regarding the nature of ozone, and in particular, that future ozone concentrations and the formation of ground level ozone, may be impacted by climate change in future years.

Under these circumstances, the EPA cannot conclude based on the current record that any aspect of its selected Step 3 level of control stringency constitutes unnecessary over-control for any of the 23 states found to be linked in 2026. The EPA requests comment on this proposed conclusion. The EPA requests comment on an alternative conclusion that, if this same analysis were to persist for a final rule, it must limit non-EGU reduction requirements for Arkansas and Mississippi to only the Tier 1 industries, and for Wyoming to limit the stringency of the rule to only the EGU reduction strategies.

VII. Implementation of Emissions Reductions

A. NO_x Reduction Implementation Schedule

This proposal, if finalized, will ensure that emissions reductions necessary to eliminate significant contribution will be achieved as “as expeditiously as practicable” as required under CAA section 181(a). The EPA’s anticipated timing will provide for all possible emissions reductions to go into effect beginning in the 2023 ozone season, which is aligned with the next upcoming attainment date of August 3, 2024, for areas classified as Moderate nonattainment under the 2015 ozone standard. Additional emissions reductions that the EPA finds not possible to implement by that attainment date are proposed to take effect as expeditiously as practicable, with the full suite of emissions reductions taking effect by the 2026 ozone season, which is aligned with the August 3, 2027, attainment date for areas classified as Serious nonattainment under the 2015 ozone NAAQS. This schedule of emissions reductions meets the requirement in the Good Neighbor Provision that it must be

implemented “consistent with the provisions of [title I of the CAA.]” CAA section 110(a)(2)(D)(i). Finally, the timing of this proposed rulemaking is designed to achieve reductions as expeditiously as practicable while adhering to the procedural requirements of CAA section 110. The EPA proposes this rule to constitute a full remedy for interstate transport for the 2015 ozone NAAQS for the states covered by this proposal; the EPA does not anticipate further rulemaking to address good neighbor obligations will be required for these states with the finalization of this rule.

EPA’s proposed determinations regarding the timing of this proposed rule are informed by and in compliance with several recent court decisions. The D.C. Circuit has reiterated several times since 2008 that, under the terms of the Good Neighbor Provision, upwind states must eliminate their significant contributions to downwind areas “consistent with the provisions of [title I of the Act],” including those provisions setting attainment deadlines for downwind areas.²⁰⁷ In *North Carolina*, the D.C. Circuit found the 2015 compliance deadline that the EPA had established in CAIR unlawful in light of the downwind nonattainment areas’ 2010 deadline for attaining the 1997 NAAQS for ozone and PM_{2.5}.²⁰⁸ Similarly, in *Wisconsin*, the Court found the CSAPR Update unlawful to the extent it allowed upwind states to continue their significant contributions to downwind air quality problems beyond the downwind states’ statutory deadlines for attaining the 2008 ozone NAAQS.²⁰⁹ More recently, in *Maryland*, the Court found the EPA’s selection of a 2023 analysis year in evaluating state petitions submitted under CAA section 126 unlawful in light of the downwind Marginal nonattainment areas’ 2021 deadline for attaining the 2015 ozone NAAQS.²¹⁰ The Court noted in *Wisconsin* that the statutory command—that compliance with the Good Neighbor Provision must be achieved in a manner “consistent with” title I of the CAA—may be read to allow for some deviation from the mandate to eliminate

prohibited transport by downwind attainment deadlines, “under particular circumstances and upon a sufficient showing of necessity,” but concluded that “[a]ny such deviation would need to be rooted in Title I’s framework” and would need to “provide a sufficient level of protection to downwind States.”²¹¹

1. 2023–2025: EGU NO_x Reductions Beginning in 2023

The near-term EGU control stringencies and corresponding reductions in this proposed rulemaking cover the 2023, 2024, and 2025 ozone seasons. This is the period in which some reductions will be available, but the large portion of full remedy reductions—mainly those reductions that are driven by post combustion control installation—identified in Sections VI.B through VI.D of this proposed rule are not yet available. The EGU NO_x mitigation strategies available during these initial 3 years are the optimization of existing post-combustion controls (SCRs and SNCRs) and combustion control upgrades. As described in Sections VI.B through VI.D of this proposed rule and in accompanying TSDs, these mitigation measures can be implemented in under two months in the case of existing control optimization and in 6 months in the case of combustion control upgrades.

As described in Section VI.B of this proposed rule and in the identified TSDs, these timing assumptions account for planning, procurement, and any physical or structural modification necessary. The EPA provides significant historical data, including the implementation of the most recent Revised CSAPR Update, as well as engineering studies and input factor analysis documenting the feasibility of these timing assumptions. However, these timing assumptions are representative of fleet averages, and the EPA has noted that some units will likely overperform their installation timing assumptions, while others may have unit configuration or operational considerations that result in their underperforming these timing assumptions. As in prior interstate transport rules, the EPA is implementing these EGU reductions through a trading program approach. The trading program’s option to buy additional allowances provides flexibility in the program for outlier

sources that may need more time than what is representative of the fleet average to implement these mitigation strategies while providing an economic incentive to outperform rate and timing assumptions for those sources that can do so. In effect, this trading program implementation operationalizes the mitigation measures as state-wide assumptions for the EGU fleet rather than unit-specific assumptions.

However, starting in 2024, as described in Section VII.B.7 of this proposed rule, unit-specific daily emissions rate limits are applied to coal units with existing SCR at a level consistent with operating that control. The EPA believes that implementing these emissions reductions at the state level starting in 2023 (through state emissions budgets) while imposing the unit-specific emissions rate limits in 2024 achieves the necessary environmental performance as soon as possible while accommodating any heterogeneity in unit-level implementation schedules regarding daily operation of optimized SCRs.

Additionally, as in prior rules, the EPA assumes combustion control upgrade implementation may take up to 6 months. In the Revised CSAPR Update, covering 12 of the 25 states for which emissions reduction requirements for EGUs are established under this proposed action, the EPA finalized the rule in March of 2021 and thus did not require these combustion control-based emissions reductions in ozone-season state emissions budgets until 2022 (year two of that program).²¹² The EPA is applying the same timing assumption regarding combustion control upgrades for this proposed rulemaking given the expected similar window between an anticipated final action date and the start of the year one ozone season. The EPA is not assuming the implementation of any additional combustion control upgrades in state emissions budgets until 2024. Therefore, those 13 states covered in this action for EGU emissions reductions that were not covered in the Revised CSAPR Rule have 2023 emissions budgets that only reflect optimization of existing controls. Any identified combustion control upgrade emissions reductions are reflected beginning in the 2024 ozone-season budgets for these states. For the 12 states covered under the Revised CSAPR Update, any identified emissions reduction potential from combustion control upgrade was included and reflected in those state budgets beginning in 2022 under the Revised CSAPR Update. Therefore, the

²⁰⁷ *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), *Wisconsin v. EPA*, 938 F.3d 303 (D.C. Cir. 2019), and *Maryland v. EPA*, 958 F.3d 1185 (D.C. Cir. 2020).

²⁰⁸ *North Carolina*, 531 F.3d at 911–913.

²⁰⁹ *Wisconsin*, 938 F.3d at 303, 3018–20.

²¹⁰ *Maryland*, 958 F.3d at 1203–1204. Similarly, in *New York v. EPA*, 964 F.3d 1214 (D.C. Cir. 2020), the Court found the EPA’s selection of a 2023 analysis year in evaluating New York’s section 126 petition unlawful in light of the New York Metropolitan Area’s 2021 Serious area deadline for attaining the 2008 ozone NAAQS. 964 F.3d at 1226 (citing *Wisconsin* and *Maryland*).

²¹¹ *Wisconsin*, 938 F.3d at 320 (citing CAA section 181(a) (allowing one-year extension of attainment deadlines in particular circumstances) and *North Carolina*, 531 F.3d at 912).

²¹² 86 FR 23093.

EPA is assuming that this combustion control upgrade potential is available, if not already realized, by the first year of this action (*i.e.*, 2023) in this proposed rule.

2. 2026 and Later Years: EGU and Non-EGU NO_x Reductions Beginning in 2026

In accordance with the good neighbor provision and the downwind attainment schedule under CAA section 181 for the 2015 ozone NAAQS, the EPA is proposing to align its analysis and implementation of the emissions reductions addressing significant contribution from EGU and non-EGU sources that require relatively longer lead time at a sectoral scale with the 2026 ozone season, which is the last full ozone season preceding the August 3, 2027, Serious area attainment date for the 2015 ozone NAAQS.²¹³ The EPA proposes to find that this compliance deadline is the most expeditious date practicable and would achieve the required emissions reductions prior to the next applicable attainment date by which such reductions are, in fact, possible. The EPA proposes to find that it is not possible to require implementation of all necessary emissions controls across all of the affected EGU and non-EGU sources by the August 3, 2024, Moderate area attainment date.

Thus, the EPA is proposing to require compliance with the control requirements for all non-EGUs and the EGU reductions related to post-combustion control retrofit identified in this section no later than the 2026 ozone season (May through September). If finalized in early 2023, the final rule would provide more than three years for EGU and non-EGU sources to install whatever controls they deem suitable to comply with required emissions reductions by the 2026 ozone season. In addition, the publication of this proposal provides roughly an additional year of notice to these source owners and operators that they should begin engineering and financial planning now to be prepared to meet this implementation timetable.

The EPA views this timeframe for retrofitting post-combustion NO_x emissions controls and other non-EGU controls to be presumptively reasonable

²¹³ For each nonattainment area classified under CAA section 181(a) for the 2015 ozone NAAQS, the attainment date is “as expeditiously as practicable” but not later than the date provided in table 1 to 40 CFR 51.1303(a). Thus, for areas initially designated nonattainment effective August 3, 2018 (83 FR 25776), the latest permissible attainment dates are: August 3, 2021 (for Marginal areas), August 3, 2024 (for Moderate areas), August 3, 2027 (for Serious areas), and August 3, 2033 (for Severe areas).

and achievable. A 3-year period for installation of post-combustion control technologies is consistent with the statutory timeframe for implementation of the controls required to address interstate pollution under section 110(a)(2)(D) and 126 of the Act, the statutory timeframes for implementation of RACT in ozone nonattainment areas classified as Moderate or above, and other statutory provisions that establish control requirements for existing stationary sources of pollution.

For example, section 126 of the CAA authorizes a downwind state or tribe to petition the EPA for a finding that emissions from “any major source or group of stationary sources” in an upwind state contribute significantly to nonattainment in, or interfere with maintenance by, the downwind state. If the EPA makes a finding that a major source or a group of stationary sources emits or would emit pollutants in violation of the relevant prohibition in CAA section 110(a)(2)(D), the source(s) must shut down within 3 months from the finding unless the EPA directly regulates the source(s) by establishing emissions limitations and a compliance schedule extending no later than three years from the date of the finding, to eliminate the prohibited interstate transport of pollutants as expeditiously as practicable.²¹⁴ Thus, in the provision that allows for direct federal regulation of sources violating the good neighbor provision, Congress established 3 years as the maximum amount of time available from a final action to when emissions reductions need to be achieved at the relevant source or group of sources.

Additionally, for ozone nonattainment areas classified as Moderate or higher, the CAA requires states to implement RACT requirements less than three years after the statutory deadline for submitting these measures to the EPA.²¹⁵ Specifically, for these areas, CAA sections 182(b)(2) and 182(f) require that states implement RACT for existing VOC and NO_x sources as expeditiously as practicable but no later than May 31, 1995, approximately 30 months after the November 15, 1992, deadline for submitting RACT SIP revisions. For purposes of the 2015 ozone NAAQS, the EPA has interpreted these provisions to require

²¹⁴ CAA 110(a)(2)(D)(i) and 126(c).

²¹⁵ See, e.g., 40 CFR 51.1112(a)(3) and 51.1312(a)(3)(i) (requiring implementation of RACT required pursuant to initial nonattainment area designations no later than January 1 of the fifth year after the effective date of designation, which is less than 3 years after the submission deadline under 40 CFR 51.1112(a)(2)) and 51.1312(a)(2)(i), respectively).

implementation of RACT SIP revisions as expeditiously as practicable but no later than January 1 of the fifth year after the effective date of designation, which is less than 3 years after the deadline for submitting RACT SIP revisions.²¹⁶ For areas initially designated nonattainment with a Moderate or higher classification effective August 3, 2018 (83 FR 25776), that implementation deadline falls on January 1, 2023, approximately 29 months after the August 3, 2020 submission deadline.²¹⁷ Moderate ozone nonattainment areas must also implement all reasonably available control measures (including RACT) needed for expeditious attainment within three years after the statutory deadline for states to submit these measures to the EPA as part of a Moderate area attainment demonstration.²¹⁸

The EPA notes that the types and sizes of the EGU and non-EGU sources that the EPA proposes to include in this proposed rule, as well as the types of emissions control technologies on which the EPA proposes to base the

²¹⁶ 40 CFR 51.1312(a)(2)(i) (requiring submission of RACT SIP revisions no later than 24 months after the effective date of designation) and 51.1312(a)(3)(i) (requiring implementation of RACT SIP revisions as expeditiously as practicable, but no later than January 1 of the fifth year after the effective date of designation). For reclassified areas, states must implement RACT SIP revisions as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area’s new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier; or the deadline established by the Administrator in the final action issuing the area reclassification. 40 CFR 51.1312(a)(3)(ii); see also 83 FR 62989, 63012–63014.

²¹⁷ 40 CFR 51.1312(a)(2)(i) (requiring submission of RACT SIP revisions no later than 24 months after the effective date of designation).

²¹⁸ See, e.g., 40 CFR 51.1108(d) (requiring implementation of all control measures (including RACT) needed for expeditious attainment no later than the beginning of the attainment year ozone season, which, for a Moderate nonattainment area, occurs less than 3 years after the deadline for submission of reasonably available control measures under 40 CFR 51.1112(c) and 51.1108(a)) and 40 CFR 51.1308(d) (requiring implementation of all control measures (including RACT) needed for expeditious attainment no later than the beginning of the attainment year ozone season, which, for a Moderate nonattainment area, occurs less than three years after the deadline for submission of reasonably available control measures under 40 CFR 51.1312(c) and 51.1308(a)). Because the attainment demonstration for a Moderate nonattainment area (including RACT needed for expeditious attainment) is due three years after the effective date of the area’s designation (40 CFR 51.1308(a) and 51.1312(c)), and all Moderate nonattainment areas must attain the NAAQS as expeditiously as practicable but no later than 6 years after the effective date of the area’s designation (40 CFR 51.1303(a)), the beginning of the “attainment year ozone season” (as defined in 40 CFR 51.1300(g)) for such an area is less than three years after the due date for the attainment demonstration.

emissions limitations that would take effect for the 2026 ozone season, generally are intended to be consistent with the scope and stringency of RACT requirements for existing major sources of NO_x in downwind Moderate nonattainment areas and some upwind areas, which many states have already implemented in their SIPs.²¹⁹ Thus, the timing Congress allotted for sources in downwind states to come into compliance with RACT requirements bears directly on the amount of time that should be allotted here and indicates, as does CAA section 126, that 3 years is an outer limit on the time that should be given sources to come into compliance.

Finally, with respect to emissions standards for hazardous air pollutants, section 112(i)(3) of the CAA requires the EPA to establish compliance dates for each category or subcategory of existing sources subject to an emissions standard that “provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard,” with limited exceptions.²²⁰ Here again, where Congress was concerned with addressing emissions of pollutants that impact public health, a 3-year time period was allotted as the time needed for existing sources to come into compliance.

All of these statutory timeframes for implementation of new control requirements on existing stationary sources indicate that Congress considered 3 years to be not only a sufficient amount of time but a maximum amount of time allowable for existing stationary sources to install pollution controls as necessary for expeditious attainment, to eliminate prohibited interstate transport of pollutants, and to protect public health.

Further, the EPA notes that, given the number of years that have passed since EPA’s promulgation of the 2015 ozone NAAQS and related nonattainment area designations in 2018, and in light of the *Maryland* court’s holding that good neighbor obligations for the 2015 ozone NAAQS should have been implemented

by the Marginal area attainment date in 2021,²²¹ many states are substantially delayed in implementing their good neighbor obligations for these NAAQS, and the sources proposed for NO_x emissions control in this rule have continued to operate for several years without the controls necessary to eliminate their significant contribution to ongoing and persistent ozone nonattainment and maintenance problems in other states. Under these circumstances, we find it more than reasonable to require compliance with the control requirements for all non-EGUs and the EGU reductions related to post-combustion control retrofit identified in Section VI.B.1.b of this proposed rule by the beginning of the 2026 ozone season (*i.e.*, by May 1, 2026). May 1, 2026, is more than 3 years after the date by which the EPA currently anticipates promulgating a final FIP for the covered states, more than three years after the January 1, 2023, deadline for implementation of section 182 RACT SIP provisions in areas classified as Moderate or higher, and almost 8 years after the October 1, 2018, deadline for submission of good neighbor SIPs that prohibit significant contribution to nonattainment or interference with maintenance in downwind states.²²²

As the D.C. Circuit noted in *Wisconsin*, the good neighbor provision requires upwind states to “eliminate their substantial contributions to downwind nonattainment in concert with the attainment deadlines” in the downwind states, even where those attainment deadlines occur before EPA’s statutory deadline to promulgate a FIP.²²³ Referencing the Supreme Court’s description of the attainment deadlines as “the heart” of the CAA, the *Wisconsin* court noted that some deviation from the mandate to eliminate prohibited transport by downwind attainment deadlines may be allowed

²²¹ 958 F.3d at 1203–1204 (remanding the EPA denial of section 126 petition based on the EPA analysis of downwind air quality in 2023 rather than 2021, the year containing the Marginal area attainment date).

²²² CAA sections 110(a)(1) and 110(a)(2)(D)(i) (requiring states to submit, within 3 years after EPA’s promulgation of a new or revised NAAQS, SIP provisions adequate to satisfy the Good Neighbor Provision). As the Supreme Court noted in *EME Homer City I*, “nothing in the statute places EPA under an obligation to provide specific metrics to States before they undertake to fulfill their good neighbor obligations.” 572 U.S. 489, 510.

²²³ 938 F.3d at 317–318. For example, the court observed that the EPA may shorten the deadline for SIP submissions under CAA section 110(a)(1) and may issue FIPs soon thereafter under CAA section 110(c)(1), to align the upwind states’ deadline for satisfying good neighbor obligations with the downwind states’ deadline for attaining the NAAQS. *Id.* at 318.

only “under particular circumstances and upon a sufficient showing of necessity,” *e.g.*, when compliance with the statutory mandate amounts to an impossibility.²²⁴

For the reasons provided below in this section, the EPA is proposing to find that installation of certain EGU controls and all non-EGU controls is not possible by the Moderate area attainment date for the 2015 ozone NAAQS (*i.e.*, August 3, 2024),²²⁵ and that the 2026 ozone season, which corresponds to the August 3, 2027, Serious area attainment date for these NAAQS, is the earliest downwind attainment date by which the required emissions reductions from these strategies are possible.

a. EGU Schedule for 2026 and Later Years

As discussed in Sections VI.B through VI.D of this proposed rule, significant emissions reduction potential exists and is included in EPA’s quantification of significant contribution based on the potential to install post-combustion controls (SCR and SNCRs) at EGUs. However, as discussed in detail in those sections, the assumption for installation of this technology on a region-wide scale is 36 months in this proposed rule. This amount of time allows for all necessary procurement, permitting, and installation milestones across multiple units in the covered region. Therefore, the EPA proposes to find that these emissions reductions are not available any earlier than the 2026 compliance period. For each year in 2026 and beyond, state emissions budgets include reductions commensurate with these post-combustion control technologies identified for covered units in Step 3. The EPA notes that similar compliance schedules and post-combustion control retrofit installations have been realized successfully in prior programs allowing similar timeframes. Subsequent to the NO_x SIP Call and the parallel Finding of Significant Contribution and Rulemaking on Section 126 Petitions (which became effective December 28, 1998, and February 17, 2000, respectively ²²⁶), nearly 19 GW of SCR

²²⁴ *Id.* at 316 and 319–320 (noting that any such deviation must be “rooted in Title I’s framework” and “provide a sufficient level of protection to downwind States”).

²²⁵ Compliance by the August 3, 2021, Marginal area attainment date is also impossible as that date has passed.

²²⁶ See 63 FR 57356 (October 27, 1998); 65 FR 2674 (January 18, 2000). The D.C. Circuit stayed the NO_x SIP Call by an order issued May 25, 1999. After upholding the rule in most respects in *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000), the court lifted the stay by an order issued June 22, 2000.

²¹⁹ See the Non-EGU Sectors TSD for a discussion of SIP-approved RACT rules in effect in downwind states.

²²⁰ CAA section 112(i)(3)(B) generally authorizes the EPA to grant an extension of up to 1 additional year for an existing source to comply with emissions standards “if such additional period is necessary for the installation of controls,” and sections 112(i)(4) through (8) provide for limited extensions granted by the President where certain conditions are met, for existing sources that have installed the best available control technology (BACT) or technology required to meet a lowest achievable emissions rate (LAER), and for new sources for which construction or reconstruction is commenced by certain dates.

retrofit came online in 2002 and another 42 GW of SCR retrofit came online for steam boilers in 2003, illustrating that a considerable volume of SCR retrofit capacity is possible in a 36 month period.

However, the EPA is not proposing to apply daily emissions rates on coal-fired steam EGUs assumed to retrofit SCR until 2027 (as described in Section VII.B.1.c.i of this proposed rule). The EPA believes that implementing these emissions reductions at the state level starting in 2026 (through state emissions budgets) while imposing the unit-specific emissions rate limits in 2027 achieves the necessary environmental performance as soon as possible while accommodating any heterogeneity in unit-level implementation schedules regarding installation of new SCR.²²⁷

b. Non-EGU Schedule for 2026 and Later Years

For the suite of non-EGU controls on which the EPA has based its Step 3 findings as described in Section VI of this proposed rule, the EPA proposes to require that these controls be installed and operational by the 2026 ozone season and to find that any earlier date is not possible. The EPA previously examined the time necessary to install the controls identified for several non-EGU industries. Although the information on installation times for most NO_x controls applied to glass and cement manufacturing was uncertain, the EPA identified minimum estimated installation times for a number of other non-EGU source categories that ranged from several weeks to slightly over a year. This included timeframes of 42–51 weeks for SNCR applied to dry cement manufacturing facilities and cement kilns/dryers burning bituminous coal, 28–58 weeks for SCR applied to boilers and process heaters, 28–58 weeks for SCR applied to iron and steel in-process combustion, and 6–8 months for low NO_x burners and flue gas recirculation at iron and steel mills.²²⁸ Taking into

account necessary scale-up of construction services for multiple control installations at several emissions units, the time needed to have NO_x monitoring installed and operating, and other necessary steps in the permitting and construction processes (e.g., review of vendor bids), the EPA estimates an additional period of 6 to 18 months may be necessary for existing non-EGU sources to install the necessary controls, depending on the number of control installations at a facility.²²⁹

Additionally, the EPA previously considered the installation timing needs for NO_x controls (including SCR, SNCR, and combustion controls) at both EGU and non-EGU sources as part of the 1998 NO_x SIP Call.²³⁰ With respect to combustion controls (e.g., low-NO_x burners, overfire air, etc.), the EPA found that sources should be able to complete control technology installations and obtain relevant permits in relatively short timeframes given considerable experience at that time among sources and permitting agencies with the implementation of such controls, the fact that combustion controls are constructed of commonly available materials (steel, piping, etc.) and do not require reagent during operation, and the then availability of many vendors of combustion control technology.²³¹

With respect to post-combustion controls (primarily SCR and SNCR), the EPA considered three basic factors in assessing installation timing needs: (1) Availability of materials and labor, (2) the time needed to implement controls at plants with single or multiple retrofit requirements, and (3) the potential for interruptions in power supply resulting from outages needed to complete installations on EGUs.²³² Assuming adequate supplies of both off-the-shelf hardware (such as steel, piping, nozzles, pumps, and related equipment) and the catalyst used in the SCR process, as well as sufficient vendor capacity to supply retrofit SCR catalyst to sources, and taking into account the additional time needed for facility engineering review, developing control technology specifications, awarding a procurement contract, obtaining a construction permit, completing control technology

design, installation, and testing, and obtaining an operating permit, the EPA found that (a) about 21 months would be needed to implement an SCR retrofit on a single unit and (b) about 19 months would be needed to implement an SNCR retrofit on a single unit.²³³ The EPA also examined several particularly complicated implementation efforts and found that 34 months would be needed for a plant to install a maximum of 6 SCRs while 24 months would be needed for a plant to install a maximum of 10 SNCRs.²³⁴ Finally, the EPA found that the necessary controls could be installed on EGUs without any disruptions in the supply of electricity because connections between a NO_x control system and a boiler can generally be completed in 5 weeks or less and thus could occur during the 5-week planned outage that each EGU typically has each year.²³⁵

Thus, for both EGUs and non-EGUs, EPA's technical analysis for the 1998 NO_x SIP Call indicated that a 3-year period would be sufficient for installation of both combustion and post-combustion controls, from the planning and specification of controls to completion of control technology implementation.²³⁶ EPA's evaluation of the timeframes for post-combustion controls was based on the Agency's projection that 639 retrofit installations at EGU sources and 235 retrofit installations at non-EGU industrial sources would be necessary for existing sources in the covered states to comply with the NO_x SIP Call.²³⁷ Although the scope of types of non-EGU sources covered by this proposed FIP is broader, and the estimated number of emissions units is greater (potentially including as many as 490 emissions units), than the scope and number of non-EGU sources evaluated in the 1998 NO_x SIP Call, and although a later analysis of timeframes for installation of post-combustion controls at EGUs produced a more refined estimate for that sector only,²³⁸ EPA's prior analyses nonetheless inform the evaluation in this proposal of the necessary implementation schedule for non-EGU sources given they generally address NO_x control technologies similar to those that the EPA anticipates non-EGU sources may install to comply with the provisions of the proposed FIP

²²⁷ However, as discussed in Section VII.B.1.c.i of this proposed rule, EPA's determinations in this regard are *not* based on a finding that the retrofit of post-combustion controls would not be feasible in the 2026 ozone season for all relevant units. The EPA finds that such retrofits are available and feasible on a fleetwide scale starting in the 2026 ozone season.

²²⁸ Final Technical Support Document (TSD) for the Final Cross-State Air Pollution Rule for the 2008 Ozone NAAQS, Assessment of Non-EGU NO_x Emissions Controls, Cost of Controls, and Time for Compliance Final TSD ("CSAPR Update Non-EGU TSD"), August 2016 (Table 3), available at <https://www.epa.gov/csapr/assessment-non-egu-nox-emission-controls-cost-controls-and-time-compliance-final-td>. See also Institute of Clean Air Companies, SNCR Committee, "White Paper, Selective Non-Catalytic Reduction (SNCR) For

Controlling NO_x Emissions," at 5 (noting that "SNCR retrofits typically do not require extended source shutdowns").

²²⁹ 63 FR 57356, 57448 (October 27, 1998). EPA generally anticipates that any required permitting processes may run concurrent with other steps in the installation processes and thus may not significantly lengthen the total time needed for installation.

²³⁰ *Id.* at 57447–57449.

²³¹ *Id.* at 57447, 57449.

²³² *Id.* at 57448.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.* at 57449.

²³⁷ *Id.* at 57448 (Table V–1 and Table V–2).

²³⁸ See Final Report, "Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies," EPA–600/R–02/073 (October 2002).

(e.g., SCR, SNCR, low-NO_x burners and ultra-low NO_x burners).

Additionally, as part of EPA's evaluation of installation timing needs in the proposed CAIR (69 FR 4566), the EPA projected that it would take on average 21 months to install an SCR on one EGU unit, 27 months to install a scrubber on one EGU unit, and 3 years to install seven SCRs at a single EGU.²³⁹ The EPA also noted that some EGUs could install SCR controls in as short of a period as 13 months.²⁴⁰ This information and EPA's general experience indicate that a two-year installation timeframe for a rule requiring installation of new control technologies across a variety of emissions sources in several industries on a regional basis is a relatively fast installation timeframe, but that a 3-year installation timeframe should be feasible for most if not all of the identified industries. A shorter installation timeframe of approximately one year would likely raise significant challenges for sources, suppliers, contractors, and other economic actors, potentially including customers relying on the products or services supplied by the regulated sources. Thus, if the EPA finalizes this proposed rule in 2023, implementation of the necessary emissions controls across all of the affected non-EGU sources by the August 3, 2024, Moderate area attainment date would not be possible.

For purposes of this proposed rule, the EPA estimates that the required controls for non-EGU source categories would take up to 3 years to install across the affected industries in the 23 states that remain linked in 2026. Therefore, based on the available information, the EPA proposes to require compliance with these non-EGU control requirements by the beginning of the 2026 ozone season.

The EPA requests comment on the time needed to install the various control technologies across all of the emissions units in the Tier 1 and Tier 2 industries. In particular, the EPA solicits comment on the time needed to obtain permits (including the potential applicability of NSR requirements), the availability of vendors and materials, design, construction, and the earliest possible installation times for SCR on glass furnaces; SNCR or SCR on cement

kilns; ultra-low NO_x burners, low NO_x burners, and SCR on ICI boilers (coal-fired, gas-fired, or oil-fired); low NO_x burners on large non-EGU ICI boilers; and low emissions combustion, layered emissions combustion, NSCR, and SCR on reciprocating rich-burn or lean-burn IC engines.

With respect to emissions monitoring requirements, EPA requests comment on the costs of installing and operating CEMS at non-EGU sources without NO_x emissions monitors; the time needed to program and install CEMS at non-EGU sources; whether monitoring techniques other than CEMS, such as predictive emissions monitoring systems (PEMS), may be sufficient for certain non-EGU facilities, and the types of non-EGU facilities for which such PEMS may be sufficient; and the costs of installing and operating monitoring techniques other than CEMS.

The EPA also requests comment on whether the FIP should provide a limited amount of time beyond the 2026 ozone season for individual non-EGU sources to meet the emissions limitations and associated compliance requirements, based on a facility-specific demonstration of necessity. As the D.C. Circuit stated in *Wisconsin*, the good neighbor provision may be read to allow for some deviation from the mandate to eliminate prohibited transport by downwind attainment deadlines, "under particular circumstances and upon a sufficient showing of necessity," provided such deviation is "rooted in Title I's framework [and] provide[s] a sufficient level of protection to downwind States."²⁴¹ Consistent with this directive, and recognizing that in general, the EPA aligns good neighbor obligations in the first instance with the last full ozone season before the downwind attainment date, the EPA requests comment on whether individual non-EGU sources should be allowed to request an extension of the May 1, 2026, compliance deadline by no more than 1 year (i.e., to May 1, 2027) based on a sufficient showing of necessity. Any such comments should be supported by a detailed discussion of the facility-specific economic, technological, and other circumstances that may justify such an extension. The EPA notes that claims about infeasibility of controls are generally insufficient to justify an extension of time to comply, given the *Wisconsin* court's holding that the good neighbor provision requires

upwind states to eliminate their significant contribution in accordance with the downwind states' attainment deadlines, without regard to questions of feasibility.²⁴²

The EPA solicits comment on the specific criteria that the EPA should apply in evaluating requests for extension of the 2026 compliance deadline for non-EGU sources. Such criteria could include documentation of inability, despite best efforts, to procure necessary materials or equipment (e.g., equipment manufacturers are not able to deliver equipment before a specific date) or hire labor as needed to install the emissions control technology by 2026; documentation of installation costs well in excess of the highest representative cost-per ton threshold identified for any source (including EGUs) discussed in Section VI of this proposed rule (e.g., vendor estimate showing equipment cost); documentation of a source owner or operator's inability to secure necessary financing, due to circumstances beyond the owner/operator's control, in time to complete the installation of controls by 2026; or documentation of extreme financial or technological constraints that would require the subject non-EGU emissions unit or facility to significantly curtail its operations or shut down before it could comply with the requirements of this proposed rule by 2026. Finally, the EPA requests comment on the process through which the EPA should review and act on an extension request—e.g., the appropriate deadline for submitting a request, and whether the EPA should provide an opportunity for public comment before granting or denying a request.

The EPA anticipates that the owner or operator of the facility would bear the burden of establishing the necessity of an extension of time to comply, based on particular circumstances described and sufficiently documented in the submitted request. Claims of generalized financial or economic hardship or any claim that controls are not necessary to eliminate significant contribution would

²³⁹ 69 FR 4566, 4617 (January 30, 2004) (citing Final Report, "Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies," EPA-600/R-02/073 (October 2002)).

²⁴⁰ Final Report, "Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies," EPA-600/R-02/073 (October 2002), at 21.

²⁴¹ *Wisconsin*, 938 F. 3d at 320 (citing CAA section 181(a) (allowing one-year extension of attainment deadlines in particular circumstances) and *North Carolina*, 531 F.3d at 912).

²⁴² *Wisconsin*, 938 F.3d at 313–314, 319 ("When an agency faces a statutory mandate, a decision to disregard it cannot be grounded in mere infeasibility"). We note also that in the CSAPR Close-Out Rule (83 FR 65878, December 21, 2018), the EPA required no further reductions from upwind states beyond those set forth in the prior CSAPR Update based, in part, on the Agency's conclusion that it was not feasible to implement cost-effective emissions controls before 2023, 2 years after the 2021 attainment deadline for the downwind serious areas. The D.C. Circuit vacated the Close-Out Rule for its reliance on the same interpretation of the Good Neighbor Provision that the court had rejected in *Wisconsin*. *New York v. EPA*, 781 F. App'x 4 (D.C. Cir. 2019) (unpublished opinion).

not suffice to justify an extension. If the EPA finalizes a provision allowing sources to request limited extensions of time to comply, the Agency would review each request on a case-by-case basis as necessary to ensure consistency with the provisions of title I of the CAA.

B. Regulatory Requirements for EGUs

To implement the required emissions reductions from EGUs, the EPA proposes to revise the existing CSAPR NO_x Ozone Season Group 3 Trading Program (the “Group 3 trading program”) established in the Revised CSAPR Update both to expand the program’s geographic scope and to enhance the program’s ability to ensure favorable environmental outcomes.²⁴³ The EPA proposes to use a trading program for EGUs because of the inherently greater flexibility that a trading program can provide relative to more prescriptive, “command-and-control” forms of regulation of sufficient stringency to achieve the necessary emissions reductions. In the electric power sector, EGUs’ extensive interconnectedness and coordination create the ability to shift both electricity production and emissions among units, providing a closely related ability to achieve emissions reductions in part by shifting electricity production from higher-emitting units to lower-emitting or non-emitting units. The sector’s unusual flexibility with respect to how emissions reductions can be achieved makes the flexibility of a trading program particularly useful as a means of lowering the overall costs of obtaining such reductions. In addition, it is essential for the electric power sector to retain short-term operational flexibility sufficient to allow electricity to be produced at all times in the quantities needed to meet demand simultaneously, and the flexibility of a trading program can be helpful in supporting this aspect of the industry as well. As discussed later, to provide improved environmental outcomes, in this rulemaking, the EPA is proposing certain enhancements to the current provisions of the Group 3 trading program addressing environmental performance that will necessarily reduce the flexibility of the individual units participating in the program to some extent. However, with the

proposed enhancements, the EPA believes the inherently greater flexibility of a trading program continues to favor the use of this form of regulation, relative to more prescriptive forms of regulation, as a vehicle for achieving the emissions reductions from the electric power sector found to be necessary in this rulemaking.

The Group 3 trading program currently applies to EGUs meeting the program’s applicability criteria within the borders of twelve states: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. Affected EGUs in these twelve states would continue to participate in the Group 3 trading program as revised in this rulemaking, with some revised provisions taking effect in the 2023 control period and other revised provisions taking effect later as discussed elsewhere in this document. The EPA proposes to expand the Group 3 trading program’s geographic scope to include all of the additional states for which EGU emissions reduction requirements are being established in this rulemaking. Affected EGUs within the borders of eight states currently covered by the CSAPR NO_x Ozone Season Group 2 Trading Program (the “Group 2 trading program”)—Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin—would transition from the Group 2 program to the revised Group 3 trading program at the beginning of the 2023 control period,²⁴⁴ and affected EGUs within the borders of the five states not currently covered by any CSAPR trading program for seasonal NO_x emissions—Delaware, Minnesota, Nevada, Utah, and Wyoming—would enter the Group 3 trading program in the 2023 control period following the effective date of a final rule in this rulemaking. As is the case for the states already in the Group 3 trading program, for each state added to the program, the set of affected EGUs would include new units as well as existing units and units located in Indian country within the state’s borders as well as units not located in Indian country. Sections VII.B.2 and VII.B.3 of this proposed rule provide additional discussion of the proposed geographic expansion of the Group 3 trading program and the units in the expanded geography that would likely become subject to the program under

the program’s existing applicability provisions.

In addition to expanding the Group 3 trading program’s geographic scope, the EPA proposes to modify the program’s regulations prospectively to include certain enhancements to improve environmental outcomes. Two of the proposed enhancements would adjust the overall quantities of allowances available for compliance in the trading program in each control period so as to maintain the rule’s selected control stringency and related EGU effective emissions rate performance level as the EGU fleet evolves. First, instead of establishing emissions budgets for all future years under the program at the time of the rulemaking, which cannot reflect future changes in the EGU fleet unknown at the time of the rulemaking, the EPA proposes to revise the trading program regulations to include a dynamic budgeting procedure. This procedure would calculate emissions budgets for control periods in 2025 and later years based on more current information about the composition and utilization of the EGU fleet, specifically data available from the 2023 ozone season and following (e.g., for 2025, data from 2023; for 2026, data from 2024; etc.). (Associated revisions to the program’s variability limits and unit-level allowance allocation procedures would coordinate these provisions with the revised budget-setting procedures.) Second, starting with the 2024 control period, the EPA proposes to annually recalibrate the quantity of accumulated banked allowances under the program to prevent the quantity of allowances carried over from each control period to the next from exceeding the target bank level, which would be revised to represent 10.5 percent of the sum of the state emissions budgets. Together, these enhancements would protect the intended stringency of the trading program against potential erosion caused by EGU fleet turnover and would better sustain over time the incentives created by the trading program to apply continuously the degree of emissions control the EPA determines is necessary to address states’ good neighbor obligations.

Two further enhancements to the Group 3 trading program proposed in this rulemaking would establish provisions designed to promote more consistent emissions control by individual EGUs within the context of the trading program. First, starting with the 2024 control period for most coal-fired EGUs with existing SCR controls and the 2027 control period for most other coal-fired EGUs, a daily NO_x emissions rate of 0.14 lb/mmBtu would

²⁴³ If any of the states whose sources currently participate in the Group 3 trading program is determined in the final rule to not have additional emissions reduction requirements for EGUs, the EPA proposes in the alternative to establish a new trading program substantially similar to the revised Group 3 trading program described in this proposal that would cover units within the borders of all the states determined to have emissions reduction requirements for EGUs in the final rule.

²⁴⁴ Affected EGUs in the two other states currently covered by the Group 2 trading program—Iowa and Kansas—would continue to participate in that program.

apply as a backstop to the more stringent seasonal emissions budgets. Each ton of emissions exceeding a unit's backstop daily emissions rate would incur a 3-for-1 allowance surrender ratio instead of the usual 1-for-1 allowance surrender ratio. Second, also starting with the 2024 control period, the trading program's existing assurance provisions, which require extra allowance surrenders from sources that are found responsible for contributing to an exceedance of the relevant state's "assurance level" (*i.e.*, currently 121 percent of the state's emissions budget), would be strengthened by the addition of another backstop requirement. Specifically, for any unit found responsible for contributing to an exceedance of the state's assurance level, the revised regulations would prohibit the unit's seasonal emissions from exceeding by more than 50 tons the emissions that would have resulted if the unit had achieved a seasonal average emissions rate equal to the higher of 0.10 lb/mmBtu or 125 percent of the unit's lowest previous seasonal average emissions rate under any CSAPR seasonal NO_x trading program.²⁴⁵

These two enhancements are designed to ensure that all individual units with SCR controls have strong incentives to continuously operate and optimize their controls, and also to ensure that even units without SCR controls have strong incentives to optimize their emissions performance when a state's assurance level might otherwise be exceeded. These enhancements are generally designed to ensure consistency with EPA's determination regarding the emissions control stringency needed from EGUs to eliminate significant contribution under the Step 3 multifactor analysis as discussed in Section VI of this proposed rule. Further, these enhancements are designed to provide greater assurance that emissions controls will be operated on all days of the ozone season and therefore necessarily on the days that turn out to be most critical for downwind ozone levels. The EPA expects that promoting more consistently good emissions performance by individual EGUs will also help address disparate impacts of pollution on overburdened communities from individual units that might otherwise have chosen not to optimize their emissions performance.

²⁴⁵ The requirement would not apply for control periods during which the unit operated for less than 10 percent of the hours, and emissions rates achieved in such previous control periods would be excluded from the comparison.

1. Trading Program Background and Overview of Proposed Revisions

a. Current CSAPR Trading Program Design Elements and Identified Concerns

The use of allowance trading programs to achieve required emissions reductions from the electric power sector has a long history, rooted in the Clean Air Act Amendments of 1990. In Title IV of those amendments, Congress specified the design elements for a 48-state allowance trading program to reduce SO₂ emissions and the resulting acid precipitation. Building on the success of that first allowance trading program as a tool for addressing multi-state air pollution issues, since 1998 EPA has promulgated and implemented multiple allowance trading programs for SO₂ or NO_x emissions to address the requirements of the CAA's good neighbor provision with respect to successively more stringent NAAQS for fine particulate matter and ozone. Most of these trading programs have applied either exclusively or primarily to EGUs.

The EPA currently administers six CSAPR trading programs for EGUs (promulgated in CSAPR, the CSAPR Update, and the Revised CSAPR Update) that differ in the pollutants, geographic regions, and time periods covered and in the levels of stringency, but that otherwise are nearly identical in their core design elements and their regulatory text.²⁴⁶ The principal common design elements currently reflected in all of the programs are as follows:

- An "emissions budget" is established for each state for each control period, representing EPA's quantification of the emissions that would remain under certain projected conditions after elimination of the emissions prohibited by the good neighbor provision under those projected conditions. For each control period of program operation, a quantity of newly issued "allowances" equal to the amount of each state's emissions budget is allocated among the state's sources. (States have options to replace EPA's default allocations or to institute an auction process.) Total emissions in a given control period from all sources in the program are effectively capped at a level no higher than the total quantity

²⁴⁶ The six current CSAPR trading programs are the CSAPR NO_x Annual Trading Program, CSAPR NO_x Ozone Season Group 1 Trading Program, CSAPR SO₂ Group 1 Trading Program, CSAPR SO₂ Group 2 Trading Program, CSAPR NO_x Ozone Season Group 2 Trading Program, and CSAPR NO_x Ozone Season Group 3 Trading Program. The regulations for the six programs are set forth at subparts AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, and GGGGG, respectively, of 40 CFR part 97.

of allowances available for use in the control period, consisting of the sum of all states' emissions budgets for the control period plus any unused allowances carried over from previous control periods as "banked" allowances.

- "Assurance provisions" in each program establish an "assurance level" for each state for each control period, defined as the sum of the state's emissions budget plus a specified "variability limit." The purpose of the assurance provisions is to limit the total emissions from each state's sources in each control period to an amount close to the state's emissions budget for the control period, consistent with the good neighbor provision's mandate that required emissions reductions must be achieved within the state, while allowing some flexibility beyond the emissions budget to accommodate year-to-year operational variability. In the event a state's assurance level is exceeded, responsibility for the exceedance is apportioned among the state's sources through a procedure that accounts for the sources' shares of the state's total emissions for the control period as well as the sources' shares of the state's assurance level for the control period.

- At the program's compliance deadlines after each control period, sources are required to hold for surrender specified quantities of allowances. The minimum quantities of allowances that must be surrendered are based on the sources' reported emissions for the control period at a 1-for-1 ratio of allowances to tons of emissions (or 2-for-1 in instances of late compliance). In addition, two more allowances must be surrendered for each ton of emissions exceeding a state's assurance level for a control period, yielding an overall 3-for-1 surrender ratio for those emissions (or 4-for-1 in instances of late compliance). Failure to timely surrender all required allowances is potentially subject to penalties under the CAA's enforcement provisions.

- To continuously incentivize sources to reduce their emissions even when they already hold sufficient allowances to cover their expected emissions for a control period, and to promote compliance cost minimization, operational flexibility, and allowance market liquidity, the programs allow trading of allowances—both among sources in the program and with non-source entities—and also let allowances that are unused in one control period be carried over for use in future control periods as banked allowances. Although the programs do not directly limit either trading or banking of allowances, the 3-for-1 surrender ratio imposed by the

assurance provisions on any emissions exceeding a state's assurance level disincentivizes sources from relying on either in-state banked allowances or net out-of-state purchased allowances to emit over the assurance level.

• Finally, other common design elements ensure program integrity, source accountability, and administrative transparency. Most notably, each unit must monitor and report emissions and operational data in accordance with the provisions of 40 CFR part 75; all allowance allocations or auction results, transfers, and deductions must be properly recorded in EPA's Allowance Management System; each source must have a designated representative who is authorized to represent all of the source's owners and operators and is responsible for certifying the accuracy of the source's reports to the EPA and overseeing the source's Allowance Management System account; and comprehensive data on emissions and allowances are made publicly available.

The EPA continues to believe that the current CSAPR trading program structure established by the common design elements described previously has important positive attributes, particularly with respect to the exceptional degree of compliance flexibility it can provide to a sector such as the electric power sector where such flexibility is especially useful and valuable. However, the EPA also shares some stakeholders' concerns about whether the current structure, without enhancements, is capable of adequately addressing states' good neighbor obligations with respect to the 2015 ozone NAAQS in light of the rapidly evolving EGU fleet and the stringency and short-term form of the standard. One set of concerns relates to the observed tendency under the current trading programs for the supply of allowances to grow over time while the demand for allowances falls, reducing allowance prices and eroding the consequent incentives for sources to effectively control their emissions. A second, overlapping set of concerns relates to the general absence of source- or unit-specific emissions reduction requirements, allowing some individual sources to idle existing emissions controls. Emissions from these individual sources can contribute to increased pollution concentrations downwind on the particular days that matter for downwind exceedances of the relevant air quality standard and also have the potential to cause disproportionate adverse impacts on downwind overburdened communities. The EPA has analyzed hourly emissions

data reported in prior cap-and-trade programs and identified instances of sources that did not operate SCR controls for substantial portions of recent ozone seasons. In an effort to maintain as much compliance and operational flexibility as possible, ensure controls happen on critically important highest ozone days, guard against this behavior under a more stringent NAAQS, and provide relief to overburdened communities, the EPA would require control operation every day through a unit-level emission rate designed to ensure reductions occur on the highest ozone days in addition to maintaining a mass-based seasonal requirement. To meet the statutory requirement to eliminate significant contribution and interference with maintenance on the critically important days, this combination of requirements would require sources to plan to run controls all season, including the highest ozone days, while giving reasonable flexibility for occasional operational needs.

In this rulemaking, the EPA is proposing to revise the Group 3 trading program to include enhancements designed to address both sets of concerns described above.²⁴⁷ The principles guiding the various proposed revisions and the relationships of the revisions to one another are discussed in Sections VII.B.1.b and VII.B.1.c of this proposed rule. The individual proposed revisions are discussed in more detail in Sections VII.B.4 through VII.B.9 of this proposed rule.

b. Enhancements To Maintain Selected Control Stringency Over Time

The first set of concerns noted about the current CSAPR trading program structure relates to the programs' ability to maintain the rule's selected control stringency and related EGU effective emissions rate performance level as the EGU fleet evolves over time. Under the structure of the current CSAPR trading programs, the effectiveness of the programs at maintaining the rule's selected control stringency depends entirely on how allowance prices over time compare to the costs of sources' various emissions reduction opportunities, which in turn depends on the relationship between the supply for allowances and the demand for allowances. In considering possible ways to address concerns about the

ability to enhance the current trading program structure to better sustain incentives to control emissions over time, the EPA has focused on the trading program design elements that determine the supply of allowances, specifically the approach for setting state emissions budgets and the rules concerning the carryover of unused allowances for use in future control periods as banked allowances.

i. Revised Emissions Budget-Setting Process

In each of the previous rulemakings establishing CSAPR trading programs, the EPA has evaluated the emissions that could be eliminated through implementation of certain types of emissions control strategies available at various cost thresholds to achieve certain rates of emissions per unit of heat input (*i.e.*, the amount of fuel consumed) and the effects of the resulting emissions reductions on downwind air quality. After determining the emissions control strategies and associated emissions reductions that should be required under the good neighbor provision by considering these factors in a multifactor test, the EPA has then projected the amounts of emissions that would remain after the assumed implementation of the selected emissions control strategies at various points in the future and has established the projected remaining amounts of emissions as the state emissions budgets in trading programs.

Projecting the amounts of emissions remaining after implementation of selected emissions controls necessarily requires projections not only for sources' future emissions rates but also for other factors that influence total emissions, notably the composition of the future EGU fleet (*i.e.*, the capacity amounts of different types of sources with different emissions rates) and their future utilization levels (*i.e.*, their heat input). To the extent the projections made at the time of a rulemaking for these other factors prove inaccurate, over time the emissions budgets may not reflect the intended stringency of the emissions control strategies identified in the rulemaking as consistent with addressing states' good neighbor obligations. Further, projecting EGU fleet composition and utilization has become increasingly challenging in light of the rapid evolution of the electric power sector toward more efficient and cleaner sources of generation, driven by factors including lower prices for natural gas and wind and solar generation.

²⁴⁷ With the exception of the proposed conforming revisions to allowance recordation schedules discussed in Section VII.B.12 of this proposed rule, the EPA is not proposing in this rulemaking to extend the enhancements proposed for the Group 3 trading program to the other CSAPR trading programs.

A consequence of using a trading program approach with preset emissions budgets that do not keep pace with the trends in EGU fleet composition and heat input is that the preset emissions budgets maintain the supply of allowances at levels that increasingly exceed the emissions that would occur even without implementation of the emissions control strategies used as the basis for determining the emissions budgets, causing decreases in allowance prices and hence the incentives to implement the control strategies. As an example, although the emissions budgets in the CSAPR Update established in 2016 reflected implementation of the emissions control strategy of operating and optimizing existing SCR controls, within 4 years the EPA found that EGU retirements and changes in utilization not anticipated in EPA's previous budget-setting computations had made it economically attractive for at least some sources to idle or reduce the effectiveness of their existing controls (relying on purchased allowances instead).²⁴⁸ While the EPA has provided analysis indicating that, on average, sources operate their controls more effectively on high electric demand days, it has also identified cases where units fail to optimize their controls on these days. Downwind states have suggested this type of reduced pollution control performance has occurred on the day and preceding day of an ozone exceedance.^{249 250} Such an outcome undermined the ongoing achievement of emissions rate performance consistent with the control strategies defined to eliminate significant contribution to nonattainment and interference with maintenance, including continuous operation and optimization of existing controls.

In the Revised CSAPR Update, the EPA took steps to better address the rapid evolution of the EGU fleet, specifically by setting updated emissions budgets for individual future

years though 2024 that reflect future EGU fleet changes known with reasonable certainty at the time of the rulemaking. Some commenters requested that the EPA also update the year-by-year emissions budgets to reflect future fleet changes that might become known after the time of the rulemaking, but the EPA declined to do so, in part because no methodology for making future emissions budget adjustments in response to post-rulemaking data had been included in the proposal for the rulemaking.

Based on information available as of December 2021, it appears that the emissions budgets set for the first control period covered by the Revised CSAPR Update generally succeeded at creating incentives to operate emissions controls under the Group 3 trading program for the programs' first control period. However, the EPA recognizes that the lack of emissions budget adjustments after 2024 in conjunction with industry trends toward more efficient and cleaner resources would likely lead to a surplus of allowances after the adjustments end. In this rulemaking, besides setting new emissions budgets for the 2023 and 2024 control periods, the EPA also proposes to extend the Group 3 trading program budget-setting methodology used in the Revised CSAPR Update to routinely set emissions budgets for each future control period in the year before that control period, with each emissions budget reflecting the latest available information on the composition and utilization of the EGU fleet at the time that emissions budget is determined.

The current budget-setting methodology established in the Revised CSAPR Update and the proposed revisions are discussed in detail in Section VII.B.4 of this proposed rule and the Ozone Transport Policy Analysis Proposed Rule TSD. To summarize here, the Revised CSAPR Update's emissions budget-setting methodology includes three primary steps: (1) Establishment of a baseline inventory of EGUs adjusted for known retirements and new units, with heat input and emissions rate data for each EGU in the inventory based on recent historical data; (2) adjustment of the baseline data to reflect assumed emissions rate changes resulting from known new controls, known gas conversions, and implementation of the emissions control strategies used to determine states' good neighbor obligations; and (3) application of an increment or decrement to reflect the effect on emissions from projected generation shifting among the units in a state at the emissions reduction cost

associated with the selected emissions control strategies. In this rulemaking, the EPA proposes to modify this methodology in two ways. First, the baseline EGU inventory and heat input data, but not the emissions rate data, would be updated for each control period using the most recent available reported data. For example, in early 2024, using the final data reported for 2023, the EPA would update the baseline inventory and heat input data used to determine state emissions budgets for the 2025 control period. Second, the EPA would not apply an increment or decrement to any state emissions budget for projected generation shifting associated with implementation of the selected control strategies, because any such shifting should already be reflected in the heat input data used to update the baseline.²⁵¹

The EPA believes that the proposed revisions to the emissions budget-setting process would substantially improve the ability of the emissions budgets to keep pace with changes in the composition and utilization of the EGU fleet. The revised methodology would account for the electric power sector's overall trends toward more efficient and cleaner resources, both of which tend to decrease total heat input at affected EGUs. The revised methodology would also account for other factors that could lead to increased heat input in some states, such as generation shifting from other states or increases in electricity demand caused by rising electrification. The updating procedure would be specified in the program regulations and the computations, which would be straightforward, could be performed in a spreadsheet to deliver reliable results. EPA would provide public notice of the preliminary calculations and the data used by March 1 of the year preceding the control period and would provide an opportunity for submission of any objections to the data and preliminary calculations before finalizing the budgets for each control period by May 1 of the year before the control period to which those budgets apply. Thus, for example, sources and other stakeholders will have certainty by May 1, 2024, of the emissions budgets that will be set for the 2025 control period that starts May 1, 2025.

²⁵¹ Emission reductions derived from generation shifting will be captured in the dynamic budgets in all cases. For the pre-set budget years it is estimated and incorporated through an additional calculation step. For dynamic budget years, it is directly incorporated through the inclusion of updated heat input data reflecting observed, compliance period generation shifting.

²⁴⁸ The price of allowances in CSAPR Update states started out at levels near \$800 per ton in 2017 but declined to less than \$100 per ton by 2019 and were less than \$70 per ton in July 2020 (data from S&P Global Market Intelligence).

²⁴⁹ 86 FR 23117.

²⁵⁰ See *EPA-HQ-OAR-2020-0272-0094*. "... is demonstrated through examination of Maryland's ozone design value days for June 26th–28th, 2019. On those days, Maryland recorded 8-hour ozone levels of 75, 85 and 83 ppb at the Edgewood monitor. Maryland Department of the Environment evaluated the daily NO_x emission rate for units in Pennsylvania that were found to influence the design values on the 3 exceedance days (and 1 day prior to the exceedance) against the past-best ozone season 30-day rolling average optimized NO_x rate (which tends to be higher than the absolute lowest seasonal average rate)."

It bears emphasis that the annually updated information would concern only the composition and utilization of the EGU fleet and not the emissions rate data also used in the emissions budget computations. The emissions budget computations for all years would reflect only the specific emissions control strategies used to determine states' good neighbor obligations as determined in this rulemaking, along with fixed historical emissions rates for units that are not assumed to implement additional control strategies, thereby ensuring that the annual updates would eliminate emissions as determined to be required under the good neighbor provision. The stringency of the emissions budgets would simply reflect the stringency of the emissions control strategies determined in the Step 3 multifactor analysis and would do so more consistently over time than EPA's previous approach of computing emissions budgets for all future control periods at the time of the rulemaking.

The proposed revisions to state emissions budgets and the budget-setting process are discussed further in Section VII.B.4 of this proposed rule. Proposed coordinated revisions to the determination of state-level variability limits and assurance levels and to unit-level allowance allocations are discussed in Sections VII.B.5 and VII.B.9 of this proposed rule, respectively.

ii. Allowance Bank Recalibration

Besides the levels of the emissions budgets, the second design element of the trading program structure that affects the supply of allowances in each control period, and that consequently also affects the ability of a trading program to maintain the rule's selected control stringency and related EGU effective emissions rate performance level as the EGU fleet evolves over time, is the set of rules concerning the carryover of unused allowances for use in future control periods as banked allowances. As noted previously, trading and banking of allowances in the CSAPR trading programs can serve a variety of purposes: Continuously incentivizing sources to reduce their emissions even when they already hold sufficient allowances to cover their expected emissions for a control period, facilitating compliance cost minimization, accommodating necessary operational flexibility, and promoting allowance market liquidity. All of these purposes are advanced by rules that allow sources to trade allowances freely (both with other sources and with non-source entities such as brokers). All of these purposes

are also advanced by rules that allow unused allowances to be carried over for possible use in future control periods, thereby preserving a value for the unused allowances. However, while the EPA considers it generally advantageous to place as few restrictions on the trading of allowances as possible,²⁵² unrestricted banking of allowances has a potentially significant disadvantage offsetting its advantages, namely that it allows what might otherwise be temporary surpluses of allowances in some individual control periods to accumulate into a long-term allowance surplus that reduces allowances prices and weakens the trading program's incentives to control emissions. With weakened incentives, some operators would be more likely to choose not to continuously operate and optimize their emissions controls, imperiling the ongoing achievement of emissions rate performance consistent with the control strategies defined as eliminating significant contribution to nonattainment and interference with maintenance.

As discussed in detail in Section VII.B.6 of this proposed rule, the EPA is proposing to revise the Group 3 trading program by adding provisions that would establish a routine recalibration process for banked allowances that would be carried out in August 2024 and each subsequent August, after the compliance deadline for the control period in the previous year. In each recalibration, the EPA would reset the total quantity of banked allowances for the Group 3 trading program ("Group 3 allowances") held in all Allowance Management System accounts to a target level of 10.5 percent of the sum of the state emissions budgets for the current control period. The procedure would entail identifying the ratio of the target

²⁵² The advantages of trading programs discussed earlier in this section—providing continuous emissions reduction incentives, facilitating compliance cost minimization, and supporting operational flexibility—depend on the existence of a marketplace for purchasing and selling allowances, and broader marketplaces generally provide greater market liquidity and therefore make trading programs better at providing these advantages. The EPA recognizes that unrestricted use of *net* purchased allowances—meaning quantities of purchased allowances that exceed the quantities of allowances sold—by a source or group of sources as an alternative to making emissions reductions can interfere with the achievement of the desired environmental outcome, and Section VII.B.1.c of this proposed rule discusses the enhancements to the Group 3 trading program that the EPA is proposing in this rulemaking to reduce reliance on net purchased allowances by incentivizing or requiring better environmental performance at individual EGUs. However, the concern arises from the *use of an excessive quantity* of net purchased allowances for a particular purpose, not from the existence of a *marketplace* where allowances may be freely bought and sold.

bank amount to the total quantity of banked allowances held in all accounts before the conversion and then, if the ratio was less than 1.0, multiplying the quantity of banked allowances held in each account by the ratio to identify the appropriate recalibrated amount for the account (rounded to the nearest allowance), and deducting any allowances in the account exceeding the recalibrated amount.

The EPA believes this revision to the Group 3 trading program's banking provisions would complement the proposed revisions to the budget-setting process by ensuring that the annual bank recalibration would prevent any surplus of allowances created in one control period from diminishing the intended stringency and resulting emissions reductions of the emissions budgets for subsequent control periods.²⁵³

The calibration procedure would not erase the value of unused allowances for the holder, because the larger the quantity of banked allowances that is held in a given account before each recalibration, the larger the quantity of banked allowances that would be left in the account after the recalibration for possible sale or use in meeting future compliance requirements. Because the banked allowances would always have value, the opportunity to bank allowances would continue to advance the purposes served by otherwise unrestricted banking as described above. Opportunities to bank unused allowances can serve all these same purposes whether a banked allowance is of partial value (if the bank needs recalibrating to its target level) or is of full value compared to a newly issued allowance for the next control period.

The proposal to routinely recalibrate the allowance bank is discussed further in Section VII.B.6 of this proposed rule.

d. Enhancements To Improve Emissions Performance at Individual Units

The second set of concerns about the structure of the current CSAPR trading programs relates to the general absence of source- or unit-specific emissions reduction requirements. Without such requirements, the programs affect individual sources' emissions

²⁵³ The EPA recognizes there will be a data lag inherent in the future year emissions budgets, because the budgets would reflect fleet composition and utilization data reported for a previous control period. This means that the budgets for some individual control periods may fail to fully keep pace with the EGU fleet's trends toward more efficient and cleaner resources. Nonetheless, the new approach is a substantial improvement in environmental performance of the program compared to a more unlimited approach to allowance banking.

performance only to the extent that the incentives created by allowance prices are high enough relative to the costs of the sources' various emissions control opportunities. In circumstances where the incentives to control emissions are insufficient, some individual sources even idle existing emissions controls. Emissions from these individual sources can contribute to increased pollution concentrations downwind on the particular days that matter for downwind exceedances of the relevant air quality standard and also have the potential to cause disproportionate adverse impacts on downwind overburdened communities.

This EPA intends that the trading program enhancements described in Section VII.B.1.b of this proposed rule would improve the Group 3 trading program's ability to sustain emissions control incentives over time such that needed emissions performance would be achieved by all participating units without the need for additional requirements to be imposed at the level of individual units. However, because obtaining needed emissions performance at individual units is also important, the EPA proposes to supplement the previously discussed enhancements with two other new sets of provisions that would apply to certain individual units within the larger context of the Group 3 trading program. The allowance price would continue to be the most important driver of good environmental performance for most units, but the proposed unit-level requirements would be important supplemental drivers of performance and would offer additional assurance that significant contribution is eliminated on a daily basis during the ozone season by continuous operation of existing pollution controls.

i. Unit-Specific Backstop Daily Emissions Rates

The first of the proposed trading program enhancements intended to improve emissions performance at the level of individual units is the addition of backstop daily NO_x emissions rate provisions that would apply to large coal-fired EGUs, defined for this purpose as units serving electricity generators with nameplate capacities equal to or greater than 100 MW and combusting any coal during the control period in question. Starting with the 2024 control period, a 3-for-1 allowance surrender ratio (instead of the usual 1-for-1 surrender ratio) would apply to emissions during the ozone season from any large coal-fired EGU with existing SCR controls exceeding a daily average NO_x emissions rate of 0.14 lb/mmBtu.

The additional allowance surrender requirement would be integrated into the trading program as a new component in the calculation of each unit's primary emissions limitation, such that the additional allowances would have to be surrendered by the same compliance deadline of June 1 after each control period. The amount of additional allowances to be surrendered would be determined by computing, for each day of the control period, any excess of the unit's reported emissions (in pounds) over the emissions that would have resulted from combusting that day's actual heat input at an average daily emissions rate of 0.14 lb/mmBtu, summing the daily amounts, converting from pounds to tons, and multiplying by two. Starting with the 2027 control period, the 3-for-1 surrender ratio would apply in the same way to all large coal-fired EGUs, consistent with EPA's proposed determinations, first, that a control stringency reflecting installation and operation of SCR controls on all large coal-fired EGUs is appropriate to address states' good neighbor obligations with respect to the 2015 ozone NAAQS, and second, that such controls could reasonably be installed by the 2026 control period.

In prior rules addressing interstate transport of air pollution, stakeholders have noted that while seasonal cap-and-trade programs are effective at lowering ozone and ozone-forming precursors across the ozone season, attainment of the standard is measured on key days and therefore it is necessary to ensure that the rule requires emissions reductions not just seasonally, but also on those key days.²⁵⁴ They have noted that while the trading programs established under the NO_x SIP Call, CAIR, and CSAPR have all been successful in ensuring seasonal reductions, states must remain below daily peak levels, not just seasonal levels, to reach attainment. These downwind stakeholder communities have suggested that operating pollution controls on the highest ozone days (and immediately preceding days) during the ozone season is of critical importance. The EPA has analyzed hourly emissions data reported in prior cap-and-trade programs and has identified instances of sources that did not operate SCR controls for substantial portions of recent ozone seasons. These instances are discussed below and in the EGU NO_x Mitigation Strategies Proposed Rule TSD in the docket. While the EPA

has in prior ozone transport actions not found sufficient evidence of emissions control idling or non-operation to take the step of building in enhancements to the trading program to ensure unit-level control operation, our review of that information applied to this context suggests this problem could become more prevalent in future years relevant to this action. Rather than allow for the potential of continued deterioration in the environmental performance of our trading programs, the EPA finds the evidence of declining SCR performance in later years of trading programs sufficient to justify prophylactic measures in this proposal to ensure the emissions control strategy selected at Step 3 is indeed implemented at Step 4. Thus, particularly in the context of the more stringent 2015 ozone NAAQS combined with the full remedy nature of this action and the extended timeframe for which upwind contribution to downwind nonattainment is projected to persist, the EPA agrees with these stakeholders that the set of measures promulgated in this rulemaking to implement the control stringency levels found necessary to address states' good neighbor obligations should include measures designed to more effectively ensure that individual units operate their emission controls routinely throughout the ozone season, thereby also ensuring that the controls are planned to be in operation on the particular days that turn out to be most critical for ozone formation and for attainment of the NAAQS.²⁵⁵ Routine operation of emissions controls will also provide relief to overburdened communities downwind of any units that might otherwise have chosen not to operate their controls. In the Ozone Transport TSD, the EPA conducted a screening analysis that found nearly all of the EGUs included in this analysis are located within a 24-hour transport distance of many areas with potential EJ concerns. The EPA is proposing to adopt backstop daily rate limits at the individual unit level for this purpose, implemented in the context of a trading program (*i.e.*, through enhanced allowance surrender ratios), as an alternative to adopting enforceable rate limits.

The purpose of establishing a backstop daily NO_x emissions rate and implementing it through additional

²⁵⁵ The CSAPR Update was a partial remedy and the Revised CSAPR Update addressed downwind nonattainment and maintenance issues that were projected to be resolved within a 4 year window. In contrast, this rule reflects a full remedy and is addressing downwind nonattainment and maintenance issues that are projected to persist for more than a decade.

²⁵⁴ EPA-HQ-OAR-2020-0272. Comment submitted by Ben Grumbles, Secretary, Maryland Department of the Environment (MDE).

allowance surrender requirements instead of as an enforceable rate limit is to incentivize improved emissions performance at the individual unit level while continuing to preserve, to the extent possible, the advantages that the flexibility of a trading program brings to the electric power sector. As discussed in Section VII.B.7 of this proposed rule, under existing trading programs without the enhancements proposed in this rulemaking, some individual coal-fired units with SCR controls have chosen to operate the controls at lower removal efficiencies than in past ozone seasons or even to idle the controls for entire ozone seasons. In addition, some SCR-equipped units have chosen to routinely cycle their emissions controls off at lower load levels, such as while operating overnight, instead of operating the controls, upgrading the units to enable the controls to be operated under those conditions, or not operating the units under those conditions.

The EPA has identified sources of interstate ozone pollution such as the New Madrid and Conemaugh plants (in Missouri and Pennsylvania, respectively) whose SCR controls were not operating for substantial portions of recent ozone seasons. The data in Figures 1 and 2 to Section VII.B.1.c.i, included in Appendix G of the Ozone Transport Policy Analysis Proposed Rule TSD available in the docket for this rulemaking, demonstrate that these units have operated their SCRs better and more consistently during years with higher NO_x allowance prices.

Downwind stakeholders have noted that some of the higher emission rates (specifically in the case of Conemaugh Unit 2 in 2019) have occurred on the day of and the preceding day of an ozone exceedance in bordering states.²⁵⁶

The EPA believes that the design of the proposed daily emissions rate provisions would be effective in addressing these types of high-emitting behavior by significantly raising the cost of planned operator decisions that substantially compromise environmental performance. At the same time, the provision would not unduly penalize an occasional unplanned exceedance, because the amount of additional allowances that would have to be surrendered to address a single day's exceedance would be much smaller than the amount that would have to be surrendered to address planned poor performance sustained over longer time periods.²⁵⁷

The EPA proposes to apply the daily emissions rate provisions to large coal-fired EGUs, and not to other types of units, for reasons that are consistent with EPA's determinations regarding the appropriate control stringency for EGUs to address states' good neighbor obligations with respect to the 2015 ozone NAAQS. Installation and operation of SCR controls is well-established as best practice for control of NO_x emissions from coal-fired EGUs, as evidenced by the fact that the technology is already installed on more than 60 percent of the sector's total coal-fired capacity. In the context of the need for states to address their good neighbor obligations with respect to the 2015 ozone NAAQS, the EPA is proposing to determine that a control stringency reflecting universal installation and operation of SCR technology at large coal-fired EGUs is appropriate, based on a multi-factor test that includes consideration of cost-effectiveness along with air quality factors. Finally, where SCR controls are installed, optimized operation of those controls is an extremely cost-effective method of achieving NO_x emissions reductions. The EPA believes these considerations support establishment of the proposed daily emissions rate provisions on a universal basis for large coal-fired EGUs, with near-term application of the provisions for units that already have the controls installed and deferred application for other units, as discussed later.

With regard to gas-fired steam EGUs, SCR controls are nowhere near as prevalent, and while the EPA is proposing to include some SCR controls at gas-fired steam units in the selected control stringency, the EPA is not proposing to include universal SCR controls at gas-fired steam units. Because the EPA does not propose to determine that universal installation and operation of SCR controls at gas-fired steam EGUs is part of the selected control stringency, in order not to constrain the power sector's flexibility to choose which particular gas-fired steam EGUs are the preferred candidates for achieving the required emissions

behavior—*i.e.*, turning off emissions controls at times of peak electricity demand in order to sell the additional electricity that otherwise would have been used to run the control equipment—EPA's analysis of hourly emissions data does not show that this behavior is actually occurring. The data actually suggest the opposite—that emissions controls are generally operated better on peak demand days than on other days. See the Ozone Policy Analysis Proposed Rule TSD for additional details about the assessment of the tons and the Discussion of Short-term Emissions Limit document for an assessment of control operation on peak demand days.

reductions, the EPA is not proposing to apply the daily emissions rate provisions to large gas-fired steam EGUs. Focusing the backstop daily emissions rates on coal-fired units is also consistent with stakeholder input which has emphasized the need for short-term rate limits at coal units given their relatively higher emissions rates.

The EPA developed the proposed level of the daily average NO_x emissions rate—0.14 lb/mmBtu—through analysis of historical data, as described in Section VII.B.7 of this proposed rule. A rate of 0.14 lb/mmBtu represents the daily average NO_x emissions rate that has been demonstrated to be achievable on approximately 95 percent of days covering more than 99 percent of total ozone-season NO_x emissions by coal-fired units with SCR controls that are achieving a seasonal NO_x average emissions rate of 0.08 lb/mmBtu (or less), which is the seasonal NO_x emissions rate that the EPA has determined is indicative of optimized SCR performance by units with existing SCR controls.

As noted previously, the daily average emissions rate provisions are proposed to apply beginning in the 2024 control period for large coal-fired units with installed SCR controls, one control period later than optimization of those controls would be reflected in the state emissions budgets under the proposal. Likewise, the daily average emissions rate provisions are proposed to apply beginning in the 2027 control period for other large coal-fired units, one control period later than emissions reductions consistent with the installation and operation of SCR controls for such units would be reflected in the state emissions budgets under the proposal. With respect to the units with existing SCR controls, not applying the daily average rate provisions until 2024 would serve two purposes. First, it would provide all the units with a preparatory interval to focus attention on improving not only the average performance of their SCR controls but also the day-to-day consistency of performance before they would be held to increased allowance-surrender consequences for exceeding the daily rate. Second, it would provide the subset of units that exhaust to common stacks with other units that currently lack SCR controls an opportunity to exercise the option to install and certify any additional monitoring systems needed to monitor the individual units' NO_x emissions rates separately; otherwise, the daily emissions rate provisions would apply to the SCR-equipped units based on the combined

²⁵⁶ EPA-HQ-OAR-2020-0272-0094.

²⁵⁷ While the proposed design of the daily emissions rate provision would not deter another theoretical type of poor emissions control

NO_x emissions rates measured in the common stacks.²⁵⁸

With respect to the units without existing SCR controls, not applying the daily average emissions rate provisions until 2027 would also serve two purposes. First, it would provide a window for plant personnel to gain experience operating any new SCR controls, and second, it would provide some timing flexibility for any individual unit operators who fail to complete SCR control installations before the start of the 2026 control period. With respect to both sets of units, the EPA believes that the lag in applicability of one control period is permissible because the emissions budget provisions are the principal provisions intended to drive the emissions reductions required under the proposal, while the daily average emissions rate provisions are included only to backstop those provisions.

The EPA believes that the proposed unit-specific daily emissions rate provisions would strengthen the incentives for individual coal-fired units with SCR controls to operate and optimize performance of the controls. Continuous operation and optimization of post-combustion controls at individual units would help address individual days that prove in real time to be most critical for downwind ozone levels. Better continuous emissions performance by individual units would also help address disparate impacts of pollution on overburdened communities downwind from the units.

The proposed unit-specific target daily emissions rates are discussed further in Section VII.B.7 of this proposed rule.

ii. Unit-Specific Emissions Limitations Contingent on Assurance Level Exceedances

The second of the proposed trading program enhancements intended to improve emissions performance at the level of individual units is the addition of unit-specific secondary emissions limitations. The secondary emissions limitations would be determined on a unit-specific basis according to each unit's individual performance but would apply to a given unit only under the circumstance where a state's assurance level for a control period has been exceeded, the unit is included in

a group of units to which responsibility for the exceedance has been apportioned under the program's assurance provisions, and the unit operated during at least 10% of the hours in the control period. Where these conditions for application of a secondary emissions limitation to a given unit for a given control period are met, the unit's secondary emissions limitation would consist of a prohibition on NO_x emissions during the control period that exceed by more than 50 tons the NO_x emissions that would have resulted if the unit had achieved an average emissions rate for the control period equal to the higher of 0.10 lb/mmBtu or 125 percent of the unit's lowest average emissions rate for any previous control period under any CSAPR seasonal NO_x trading program during which the unit operated for at least 10 percent of the hours.

The proposed secondary emissions limitation would be in addition to, not in lieu of, the primary emissions limitation applicable to each source, which would continue to take the form of a requirement to surrender a quantity of allowances based on the source's emissions, and also in addition to the existing assurance provisions, which similarly would continue to take the form of a requirement for the owners and operators of some sources to surrender additional allowances when a state's assurance level is exceeded. In contrast to these other requirements, the proposed unit-specific secondary emissions limitation would take the form of a prohibition on emissions over a specified level, such that any emissions by a unit exceeding its secondary emissions limitation would be subject to potential administrative or judicial action and subject to penalties and other forms of relief under the CAA's enforcement authorities. The reason for proposing this form of limitation is that experience under the existing CSAPR trading programs has shown that, in some circumstances, the existing assurance provisions have been insufficient to prevent exceedances of a state's assurance level for a control period even when the likelihood of an exceedance has been foreseeable and the exceedance could have been readily avoided if certain units had operated with emissions rates closer to the lower emissions rates achieved in past control periods. The assurance levels exist to ensure that emissions from each state that contribute significantly to nonattainment or interfere with maintenance of a NAAQS in another state are prohibited. *North Carolina v. EPA*, 531 F.3d 896, 906–908 (D.C. Cir.

2008). EPA's programs to eliminate significant contribution must therefore achieve this prohibition, and the new evidence of exceedances of the assurance provisions demonstrate that EPA's existing approach may not be sufficient to accomplish this statutory mandate.

The purpose of including assurance levels higher than the state emissions budgets in the CSAPR trading programs is to provide flexibility to accommodate operational variability attributable to factors that are largely outside of an individual owner's or operator's control, not to allow owners and operators to plan to emit at emissions rates that could be anticipated to cause a state's total emissions to exceed the state's emissions budget or assurance level. Conduct leading to a foreseeable, readily avoidable exceedance of a state's assurance level cannot be reconciled with the statutory mandate of the CAA's good neighbor provision that emissions "within the state" significantly contributing to nonattainment or interfering with maintenance of a NAAQS in another state must be prohibited. Because the current CSAPR regulations do not expressly prohibit such conduct and have proven insufficient to deter it in some circumstances, the EPA is proposing to correct the regulatory deficiency in the Group 3 trading program by adding secondary emissions limitations that cannot be complied with through the use of allowances.

The EPA notes that although the principal purpose of the proposed secondary emissions limitations is to strengthen the assurance provisions, which apply on a statewide, seasonal basis, the unit-specific structure of the new limitations would strengthen the incentives for individual units to maintain their emissions performance at levels consistent with their previously demonstrated capabilities. For units with existing post-combustion emissions controls, the new limitations would strengthen the incentives to operate and optimize the controls continuously, and for units without such existing controls, the new limitations would strengthen the incentives to minimize NO_x emissions rates through other possible measures such as improved maintenance and optimization of combustion parameters. Continuous operation of post-combustion controls and greater attention to the combustion process at individual units can be expected to reduce some individual units' emissions rates throughout the ozone season, including on the days that turn out to be most critical for downwind ozone

²⁵⁸ Based on the information reported by sources to the EPA in their monitoring plans under 40 CFR part 75, five plants subject to this proposal have SCR-equipped and non-SCR-equipped coal-fired EGUs that exhaust together to common stacks: The Clifty Creek plant in Indiana; the Cooper, Ghent, and Shawnee plants in Kentucky; and the Sammis plant in Ohio.

levels. Better emissions performance on average across the ozone season by individual units would also help address disparate impacts of pollution on overburdened communities downwind from some such units.

The proposed unit-specific secondary emissions limitations are discussed further in Section VII.B.8 of this proposed rule.

2. Expansion of Geographic Scope

As part of the proposed approach for implementing the NO_x emissions reductions from EGUs identified as necessary to address various states' obligations under the good neighbor provision with respect to the 2015 ozone NAAQS, the EPA is proposing to expand the existing geographic scope of the existing CSAPR NO_x Ozone Season Group 3 Trading Program to encompass the additional states (and Indian country within the borders of such states) found to have such obligations with respect to EGUs. Specifically, the EPA is proposing to expand the Group 3 trading program to include the following states and Indian country within the borders of the states: Alabama, Arkansas, Delaware, Minnesota, Mississippi, Missouri, Nevada, Oklahoma, Tennessee, Texas, Utah, Wisconsin, and Wyoming. Any unit located in a newly added jurisdiction that meets the existing applicability criteria for the Group 3 trading program would become an affected unit under the program, as discussed in Section VII.B.3 of this proposed rule.

CSAPR, the CSAPR Update, and the Revised CSAPR Update also applied to sources in Indian country, although, when those rules were issued, no existing EGUs within the regions covered by the rules were located on lands that the EPA understood at the time to be Indian country.²⁵⁹ In contrast, within the proposed geographic scope of this rulemaking, the EPA is aware of areas of Indian country within the borders of both Utah and Oklahoma with existing EGUs that would meet the program's applicability criteria. Issues related to state, tribal, and federal jurisdiction with respect to sources in Indian country in general and in these areas in particular are discussed in Section IV.C.2 of this proposed rule.

²⁵⁹ CSAPR and the CSAPR Update both applied to EGUs located in areas within Oklahoma's borders that are now understood to be Indian country, consistent with the U.S. Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020) (and subsequent case law), clarifying the extent of certain Indian country within Oklahoma's borders. However, those rules were issued before the *McGirt* decision. See Section IV.C.2.a.

EPA's proposed approach for determining a portion of each state's budget for each control period that would be set aside for allocation to any units in areas of Indian country within the state not subject to the state's CAA implementation planning authority is discussed in Section VII.B.9 of this proposed rule.

Units in each state would join the Group 3 trading program on one of two possible dates during the program's 2023 control period (that is, the period from May 1, 2023, through September 30, 2023). The reason that two entry dates are possible is that, as discussed in Section VII.B.11 of this proposed rule, the effective date of a final rule in this rulemaking may fall after May 1, 2023. In the case of states (and Indian country within the states' borders) whose sources do not currently participate in the CSAPR NO_x Ozone Season Group 2 trading program—Delaware, Minnesota, Nevada, Utah, and Wyoming—EPA proposes that the sources would begin participating in the Group 3 trading program on the later of May 1, 2023, or the final rule's effective date. However, in the case of the states (and Indian country within the states' borders) whose sources do currently participate in the Group 2 trading program—Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin—EPA proposes that the sources would begin participating in the Group 3 trading program on May 1, 2023, regardless of the final rule's effective date, subject to transitional provisions designed to ensure that the increased stringency of the Group 3 trading program as revised in this rulemaking would not substantively affect the sources' requirements prior to the rule's effective date. This approach provides a simpler transition for the sources currently covered by the Group 2 trading program than the alternative approach of being required to switch from the Group 2 trading program to the Group 3 trading program in the middle of a control period, and it is the same approach that was followed for sources that transitioned from the Group 2 trading program to the Group 3 trading program in 2021 under the Revised CSAPR Update. Section VII.B.11 of this proposed rule contains further discussion of the rationale for this approach and the specific proposed transitional provisions.

The EPA notes that under the proposed rule, the expanded Group 3 trading program would include not only the 22 states for which the EPA is proposing to determine that the required control stringency includes, among

other measures, installation of new post-combustion controls, but also the three states—Alabama, Delaware, and Tennessee—for which the EPA is proposing to determine that the required control stringency does not include such measures. In previous rulemakings, the EPA has chosen to combine states in a single multi-state trading program only where the selected control stringencies were comparable, in order to ensure that states did not effectively shift their emissions reduction requirements to other states with less stringent emissions reduction requirements by using net out-of-state purchased allowances. Although the assurance provisions in the CSAPR trading programs were designed to address the same general concern about excessive shifting of emissions reduction activities between states, EPA chose not to rely on the assurance provisions as sufficient to allow for interstate trading in situations where the states were assigned differing emissions control stringencies.

In this rulemaking, the EPA believes the previous concern about the possibility that certain states might not make the required emissions reductions is sufficiently addressed through the various proposed enhancements to the design of the trading program, even where states have been assigned differing emissions control stringencies. First, the existing assurance provisions would be substantially strengthened through the addition of the unit-specific secondary emissions limitations discussed in Sections VII.B.1.c.ii and VII.B.8 of this proposed rule. Second, by ensuring that individual units operate their emissions controls effectively, the unit-specific backstop daily emissions rate provisions discussed in Sections VII.B.1.c.i and VII.B.7 of this proposed rule would necessarily also ensure that required emissions reductions occur within the state. With these enhancements to the design of the trading program, the EPA does not believe it would be necessary for sources in Alabama, Delaware, and Tennessee to be excluded from the revised Group 3 trading program simply because their emissions budgets would reflect a different selected emissions control stringency than the other states in the program.

The EPA requests comment on the proposed expansion of the geographic scope of the Group 3 trading program to include the states and areas of Indian country identified above. The EPA also requests comment on the proposed timing under which the two sets of states and Indian country within the

respective states' borders would be added to the program.

3. Applicability and Tentative Identification of Newly Affected Units

The Group 3 trading program generally applies to any stationary, fossil-fuel-fired boiler or stationary, fossil fuel-fired combustion turbine located in a covered state (or Indian country within the borders of a covered state) and serving at any time on or after January 1, 2005, a generator with nameplate capacity exceeding 25 MW and producing electricity for sale, with exemptions for certain cogeneration units and certain solid waste incineration units. To qualify for an exemption as a cogeneration unit, an otherwise-affected unit generally (1) must be designed to produce electricity and useful thermal energy through the sequential use of energy, (2) must convert energy inputs to energy outputs with efficiency exceeding specified minimum levels, and (3) may not produce electricity for sale in amounts above specified thresholds. To qualify for an exemption as a solid waste incineration unit, an otherwise-affected unit generally (1) must meet the CAA section 129(g)(1) definition of a "solid waste incineration unit" and (2) may not consume fossil fuel in amounts above specified thresholds. The complete text of the Group 3 trading program's applicability provisions and the associated definitions can be found at 40 CFR 97.1004 and 97.1002, respectively.

The EPA is not proposing in this rulemaking to revise the existing applicability provisions for the Group 3 trading program. Thus, any unit that is located in a newly added state and that meets the existing applicability criteria for the Group 3 trading program would become an affected unit under the program. The fact that the applicability criteria for all of the CSAPR trading programs are identical therefore is sufficient to establish that any units that are currently required to participate in another CSAPR trading program in any of the proposed additional states where such other programs currently are in effect—Alabama, Arkansas, Minnesota, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin (including Indian country within the borders of such states)—would also become subject to the Group 3 trading program.

In the proposed additional states where other CSAPR trading programs are not currently in effect—Delaware, Nevada, Utah, and Wyoming (including Indian country within the borders of such states)—units already subject to the Acid Rain Program generally would also meet the applicability criteria for the Group 3 trading program, especially if the units are not capable of producing both electricity and useful thermal energy. Based on a preliminary screening analysis of the units in these states that currently report emissions and operating data to the EPA under the Acid Rain Program and that do not report the capability to produce both electricity and useful thermal energy,

the Agency believes that all such units are likely to meet the applicability criteria for the Group 3 trading program.

Because the applicability criteria for the Acid Rain Program and the Group 3 trading program are not identical, it is possible that some units could meet the applicability criteria for one program but not the other. Using data reported to the U.S. Energy Information Administration, the EPA has identified 10 sources in Delaware, Nevada, Utah, and Wyoming (and Indian country within the borders of the states) with 27 units that appear to meet the general applicability criteria for the Group 3 trading program and that either (1) do not currently report NO_x emissions and operating data to the EPA under the Acid Rain Program or (2) currently report NO_x emissions and operating data to the EPA under the Acid Rain Program and also report the capability to produce both electricity and useful thermal energy. These units are listed in Table VII.B.3–1 of this proposed rule. For each of these units, the table shows the estimated historical heat input and emissions data that the EPA proposes to use for the unit when determining state emissions budgets if the unit is ultimately treated as subject to the Group 3 trading program.²⁶⁰ The EPA currently lacks sufficient information to determine whether any of the units listed in the table meets all of the relevant criteria to qualify for an exemption from the Group 3 trading program as a cogeneration unit or a solid waste incineration unit.

TABLE VII.B.3–1—SELECTED EXISTING UNITS THAT COULD BE AFFECTED UNDER PROPOSAL

State	Facility ID	Facility name	Unit ID	Unit type	Estimated ozone season heat input (mmBtu)	Estimated ozone season average NO _x emissions rate (lb/mmBtu)	Notes
Delaware	591	Christiana	11	CT	1,974	0.2594	1
Delaware	591	Christiana	14	CT	1,816	0.2027	1
Delaware	52193	Delaware City Refinery	DCPP2	Boiler	872,824	0.0176	2
Delaware	52193	Delaware City Refinery	DCPP3	Boiler	2,380,430	0.0169	2
Delaware	52193	Delaware City Refinery	DCPP4	Boiler	1,374,817	0.0438	2, 3
Delaware	52193	Delaware City Refinery	MECCU1	CT	1,679,396	0.0070	2
Delaware	52193	Delaware City Refinery	MECCU2	CT	1,679,396	0.0062	2
Delaware	7153	Hay Road	1	CT	1,354,272	0.0685	1
Delaware	7153	Hay Road	2	CT	1,311,286	0.0663	1
Nevada	2322	Clark	GT4	CT	190,985	0.0475	
Nevada	2322	Clark	GT5	CT	1,455,741	0.0191	
Nevada	2322	Clark	GT6	CT	1,455,741	0.0187	
Nevada	2322	Clark	GT7	CT	1,455,741	0.0178	
Nevada	2322	Clark	GT8	CT	1,455,741	0.0204	
Nevada	54350	Nev. Cogen. Assoc. 1—Gar-net Val.	GTA	CT	660,100	0.0377	2, 4

²⁶⁰ As discussed in Section VII.B.10.b of this proposed rule, the EPA expects that any unit that becomes subject to the Group 3 trading program pursuant to a final rule in this rulemaking and that does not already report emissions data to the EPA in accordance with 40 CFR part 75 would not be required to report emissions data or be subject to

allowance holding requirements under the Group 3 trading program until May 1, 2024, because of the minimum time interval allowed for installation and certification of the required monitoring systems. Such a unit would not be taken into account for purposes of determining state emissions budgets and unit-level allocations under the Group 3 trading

program until the 2024 control period. As indicated in the notes to Table VII.B.3–1 of this proposed rule, six of the listed units have reported to the Energy Information Administration that they plan to retire in 2023.

TABLE VII.B.3–1—SELECTED EXISTING UNITS THAT COULD BE AFFECTED UNDER PROPOSAL—Continued

State	Facility ID	Facility name	Unit ID	Unit type	Estimated ozone season heat input (mmBtu)	Estimated ozone season average NO _x emissions rate (lb/mmBtu)	Notes
Nevada	54350	Nev. Cogen. Assoc. 1—Gar-net Val.	GTB	CT	660,100	0.0387	2, 4
Nevada	54350	Nev. Cogen. Assoc. 1—Gar-net Val.	GTC	CT	660,100	0.0387	2, 4
Nevada	54349	Nev. Cogen. Assoc. 2—Black Mtn.	GTA	CT	749,778	0.0323	2, 4
Nevada	54349	Nev. Cogen. Assoc. 2—Black Mtn.	GTB	CT	749,778	0.0370	2, 4
Nevada	54349	Nev. Cogen. Assoc. 2—Black Mtn.	GTC	CT	749,778	0.0364	2, 4
Nevada	56405	Nevada Solar One	HI	Boiler	479,452	0.1667	.....
Nevada	54271	Saguaro	CTG1	CT	1,383,149	0.0314	2
Nevada	54271	Saguaro	CTG2	CT	1,383,149	0.0301	2
Utah	50951	Sunnyside	1	Boiler	1,888,174	0.1715	.....
Wyoming	56312	Shute Creek	021A	CT	1,000,050	0.0081	2
Wyoming	56312	Shute Creek	021B	CT	1,000,050	0.0093	2
Wyoming	56312	Shute Creek	021C	CT	1,000,050	0.0084	2

Table notes:

- ¹ Unit already reports NO_x emissions and heat input data to the EPA under 40 CFR part 75 to comply with SIP requirements.
- ² Unit reports capability of producing both electricity and useful thermal energy.
- ³ Unit already reports NO_x emissions and heat input data to EPA under 40 CFR part 75 for the Acid Rain Program.
- ⁴ Unit has reported a planned retirement date of March 2023 to the Energy Information Administration.

The EPA requests comment on which existing units in Delaware, Nevada, Utah, and Wyoming and Indian country within the borders of such states would or would not meet the applicability criteria for the Group 3 trading program. In addition, with respect to each of the units listed in Table VII.B.3–1 of this proposed rule, the EPA requests comment, with supporting data, on whether the unit would or would not meet all relevant criteria set forth in 40 CFR 97.1004 and the associated definitions in 97.1002 to qualify for an exemption from the trading program as a cogeneration unit or a solid waste incineration unit (however, see Section VI.B.3 of this proposed rule). The EPA also requests comment, with supporting data, on whether the estimated historical heat input and emissions data identified for the units in Table VII.B.3–1 of this proposed rule are representative for the respective units.

4. New and Revised State Emissions Budgets

The EPA is quantifying budgets or budget formulas specific to each year to ensure that EGUs continue to be incentivized to implement the full extent of EPA’s selected control stringency for future control periods. By doing so, the EPA is accounting for both scheduled and not-yet-scheduled fleet turnover in future years. For instance, if State X’s budget was 5,000 tons in 2023 but there are 100 tons of emissions from a unit scheduled to retire at the end of that year and 50 tons expected from a new unit coming online by the

following year, then the state emissions budget for 2024 will reflect these scheduled changes by establishing a budget of 5,000 tons – 100 tons + 50 tons = 4,950 tons for the subsequent year.

In the Revised CSAPR Update, the EPA included announced fleet changes in state emissions budgets. Several commenters applauded the merit of this approach and the importance of establishing emissions budgets that were robust to an evolving fleet while noting that “fleet composition is changing constantly and can be exceedingly difficult to project” leading to overstated emissions budgets to the extent that future retirements were not announced at the time of rule promulgation. Commenters added that “to address this problem and prevent future unknown retirements from exacerbating this issue, the final rule should include a provision to make additional adjustments to the NO_x budgets based on newly discovered fleet changes.”²⁶¹ Commenters were suggesting a dynamic budget approach where the mitigation measures and control stringencies that constituted removal of significant contribution would be identified in a final rule, but the future year state budgets would be dynamic as the EPA applied those stringency assumptions to future year fleet composition data as it became available. While the stringency (reflected by assumed emissions rate for a mitigation technology), would be constant, the fleet composition

(reflected by unit heat input) is dynamic. Multiplying the assumed emissions rate for each unit by the heat input for each unit and summing the results to the state level would provide a given year’s state emissions budget, and thus under this approach the state emissions budgets would be dynamic as well.

The EPA is proposing a dynamic budget approach in this rule, where emissions budgets starting in the 2025 control period and beyond will be determined through ministerial actions subsequent to this rule’s promulgation and based upon the formula described in this rule. This rule will determine the mitigation strategies, respective emissions rates, and formulas and methodologies to be applied to future year data, with which the EPA will perform ministerial actions to calculate emissions budgets for control periods in 2025 and each year thereafter. (Such actions will be publicly announced through notices of data availability (NODAs), similar to how other periodic ministerial actions to implement the trading programs are currently handled. And as with such other actions, interested parties will have the opportunity to seek corrections or administrative adjudication under 40 CFR part 78 if they believe any data used in making these calculations, or the calculations themselves, are in error.) In this manner, the state emissions budgets ultimately implemented for each such future control period will be a product of the data and formula promulgated in this

²⁶¹ EPA–HQ–OAR–2020–0272–0094.

action applied to future year reported data that is closer to that future control period and therefore more representative of the fleet for that future control period. As such, the budgets will more accurately reflect power sector composition in that future year and will therefore better achieve the desired environmental outcome over time.

For instance, 2025 budgets will be identified by May 1, 2024, using the latest available reported operational data at that time (2023 heat input data and fleet inventory) along with the formulas and emissions rates quantified in this rule. Therefore, if a unit retires in early 2023 but had not announced its upcoming retirement at the time of rule finalization, the dynamic budget approach would ensure that the budgets for future control periods starting in 2025 would reflect the identified control stringency applied to a fleet that reflects

that retirement. If the EPA took an alternative approach of computing the 2025 budget with available data at the time final rule analysis was being conducted, this retirement would likely not be captured in the 2025 state emissions budget, which would lead to a budget that did not fully reflect the application of the identified control stringency. This approach has the advantage of mitigating uncertainty regarding future retirements, new builds, and existing fleet operational/dispatch changes in response to EGU inventory changes.

The example below illustrates the effectiveness of the dynamic budget. In the preset budget approach for 2026, the 2026 heat input is estimated based on the latest available heat input data at the time of rule promulgation (e.g., 2021), which cannot reflect a subsequent fleet change in heat input values (column 2) due to an unanticipated retirement of

one of the state's coal-fired units in late 2023. However, the dynamic budget would use 2024 heat input values as opposed to the 2021 heat input values as the latest representative values to inform the 2026 state emissions budget. Therefore, the heat input values in column 2 under the dynamic scenario reflect the change in fleet composition, and when multiplied by the relevant identified control stringency (to be identified when this rule is finalized), the corresponding tonnage (15,000 tons) summed in column 4 constitutes a state budget that better reflects the identified control stringency applied to the fleet composition for that year as opposed to the 17,000 tons in summed in the first table. As illustrated in the example, the dynamic variable is the heat input variable which changes over time to reflect the most representative EGU fleet.

	Preset Budget Approach (2026)			Dynamic Budget Approach (2026)		
	Preset Heat Input (tBtu)	Preset Emissions Rate (lb/mmBtu)	Preset Tons (Heat input X Emissions Rate)/2000	Updated Heat Input (tBtu)	Emissions Rate (lb/mmBtu)	Updated Tons (Heat Input X Emissions Rate)/2000
Coal Units	600	0.05	15,000	500	0.05	12,500
Gas Units	400	0.01	2,000	500	0.01	2,500
State Budget (tons)			17,000			15,000

The EPA requests comment on this dynamic budget approach, including the methodology, the start year, and the impacts.

With regard to the state emissions budgets for the 2023 and 2024 control periods promulgated in this rule, the EPA is using the best available data at the time of the proposed rule regarding retirements and new builds. The EPA relies on a compilation of data from DOE EIA Form 860 (where facilities report their future retirement plans) and information included in the Agency's NEEDS database. This information is considered to be highly reliable, real-world information that provides the EPA with high confidence that such retirements will in fact occur. EPA plans to update this data on retirements and new builds at final rule using the latest information available from these sources at that time as well as input provided by commenter.

EPA's emissions budget methodology and formula for establishing Group 3 budgets are described in detail in the Ozone Transport Policy Analysis

Proposed Rule TSD and summarized below.

a. Methodology for Determining Preset State Emissions Budgets for the 2023 and 2024 Control Periods

For determining state emissions budgets, the EPA generally uses historical ozone season data from the 2021 ozone season, the most recent data and therefore the most representative of near-term fleet conditions. This is similar to the approach taken in the CSAPR Update where the EPA began with 2015 data (the most recent year at the time). As in the CSAPR Update, the EPA combined historical data with IPM data to determine emissions budgets as follows:

(1) Determine a future year baseline—Start with the latest reported historical unit-level data (e.g., 2021), and adjust any unit data where a retirement, a new build, a coal-to-gas conversion, or a SCR retrofit is known to occur by the baseline year. This results in a future year (e.g., 2023) baseline for emissions budget purposes.

(2) Factor in additional emissions controls for the selected control stringency for the given state in the given year—For the unit-

level emissions control technologies identified in this control stringency, adjust the baseline unit-level emissions and emissions rates. For example, if an SCR-controlled coal unit had a baseline emissions rate greater than 0.08 lb/mmBtu, its emissions rate and corresponding emissions would be adjusted down to levels reflecting its operation at 0.08 lb/mmBtu.

(3) Incorporate generation shifting—Use IPM in a relative way to capture the reductions expected from generation shifting (constrained to within each state) at the representative dollar per ton level corresponding to the selected control stringency.

By using historical unit and state-level NO_x emissions rates, heat input, and emissions data in the first stage of budget setting process outlined above, the EPA is grounding its budgets in the most recent representative historical operation for the covered units.²⁶² This dataset is a reasonable starting point for

²⁶² The EPA notes that historical state-level ozone season EGU NO_x emissions rates are publicly available and quality assured data. They are monitored using CEMS or other methodologies allowed for use by qualifying units under 40 CFR part 75 and are reported to the EPA directly by power sector sources.

the budget-setting process as it reflects the latest data reported by affected facilities under 40 CFR part 75. The reporting requirements include quality control measures, verification measures, and instrumentation to best record and report the data. In addition, the designated representatives of EGU sources are required to attest to the accuracy and completeness of the data. The EPA adjusted the 2021 ozone-season data to reflect committed fleet changes under a baseline scenario (*i.e.*, announced and confirmed retirements, new builds, and retrofits that have already occurred). For example, if a unit emitted in 2021, but retired in 2022, its 2021 emissions would not be included in the 2023 baseline estimate. For units that had no known changes, the 2023 baseline emissions assumption was the actual reported data from 2021. The EPA also included known new units and scheduled retrofits in this manner. Using this method, the EPA arrived at a baseline emission, heat input, and emissions rate estimate for each unit for a future year (*e.g.*, 2023), and then was able to aggregate those unit-level estimates to state-level totals. These state-level totals constituted the state's baseline from an engineering analytics perspective. The ozone-season state-level emissions, heat input, and emissions rates for covered sources under a baseline scenario were determined for each future year examined that receives a preset budget under this proposed rule (2023 and 2024).

The EPA then examined how the baseline emissions and emissions rates would change under different control stringencies for EGUs. For instance, under the SCR optimization scenario, if a unit was not operating its SCR at 0.08 lb/mmBtu or lower in the baseline, the EPA lowered that unit's assumed emissions rate to 0.08 lb/mmBtu and calculated the impact on the unit's and state's emissions rate and emissions. Note that the heat input is held constant for the unit in the process, reflecting the same level of unit operation compared to historical 2021 data. An improved emissions rate is then applied to this heat input, reflecting control optimization. In this manner, the state-level baseline totals reflecting known changes were adjusted to reflect the additional application of the assumed control technology at a given control stringency.

Finally, the EPA used IPM to capture any generation shifting at a given control stringency necessary for the majority of the respective emissions control technology to operate. The EPA explains how it accounts for generation

shifting in more detail in Section VI.B of this proposed rule and in the Ozone Transport Policy Analysis Proposed Rule TSD. In this rule, as a proxy for the near-term reductions required in 2023 and 2024, the EPA has constrained generation shifting to occur only within-state. The EPA also estimates emissions reductions associated with generation shifting in 2025 and 2026 for purposes of the illustrative state budgets, but as explained below, the dynamic budget process to determine budgets for those years will incorporate emissions reductions attributable to generation shifting through the inclusion of newly reported unit-level data from the future compliance periods.

b. Methodology for Determining Dynamic State Emissions Budgets for Control Periods in 2025 Onwards

The methodology for determining state emissions budgets for later control periods (2025 and beyond) is nearly identical to the process for quantifying preset budgets in 2023 and 2024 described earlier; it is just applied at a later date and applied to the most recent representative operational available at that time. The EPA will issue by ministerial action these dynamic budget quantifications approximately 1 year before the relevant control period. For instance, starting in early 2024, the EPA would take the most recent 2023 ozone season data, calculate 2025 state emissions budgets using the methodology below and update its unit-level and state-level state emissions budget files that will be released when this rule is finalized (and for which the EPA has included in this proposed rule current examples for public comment). By March 1 of 2024, and each year thereafter, the EPA would make publicly available (in manner similar to data and preliminary computations for allocations from new unit set-asides) the preliminary state emissions budgets and unit-level allocations for the subsequent control period (*e.g.*, 2025) and would provide stakeholders with a 30-day opportunity to submit any objections to the updated data and computations. By May 1 of 2024, and each year thereafter, the EPA would issue the final budgets and allowance allocations for the next control period (*e.g.*, 2025).

The differences to each of the formula steps to calculate dynamic budgets for control periods in 2025 and beyond, relative to the calculation of preset budgets for the 2023 and 2024 control periods, are described later:

(1) Determine a future year baseline—At this step, the EPA would start with the latest reported historical unit-level heat input data available at that time (*e.g.*, for 2025 state

emissions budgets, the EPA would use the newly available 2023 heat input data rather than 2021 heat input data). Doing so would capture the latest operational data reflecting new builds and retirements. This would yield a future year (*e.g.*, 2025) baseline for emissions budget purposes.

(2) Factor in additional emissions controls for the selected control stringency for the given state in the given year—For the unit-level emissions reduction measures identified in the selected control stringency, adjust the baseline unit-level emissions and emissions rates. This step would be nearly the same for control periods in 2025 and beyond as for the 2023 and 2024 control periods, the only difference being that as described in Section VI.D of this proposed rule, for each control period from 2026 onward, the unit-specific emissions rates assumed for all affected states except Alabama, Delaware, and Tennessee will reflect the selected control stringency that incorporates post-combustion control retrofit opportunities for the relevant units identified in the state emissions budgets and calculations appendix to the Ozone Transport Policy Analysis Proposed Rule TSD. These rates would be defined in this rule and would not change subsequently. They would not be applied until 2026, based on the time necessary to install these mitigation technologies as discussed in Sections VI.B, VI.C, and VII.A of this proposed rule.

(3) Incorporate generation shifting—This step would be automatically captured in dynamic budget calculations as generation shifting in a compliance scenario would no longer have to be projected by IPM and incorporated into the state budgets through an additional calculation. Instead, it would be embodied in the newly reported heat input data described above and that is used to determine the dynamic budgets.

Additional details, corresponding data and formulas, and examples for the dynamic budget are described in the Ozone Transport Policy Analysis Proposed Rule TSD.

c. Proposed and Illustrative State Emissions Budgets

For each covered state (and Indian country within the state's borders), preset budgets are established for the two individual control periods 2023 and 2024. For 2025 and beyond, the dynamic budget formula promulgated in this proposed rule would be applied to future year data to quantify state emissions budgets for those control periods. The proposed default procedures for allocating the allowances from each state budget among the units in each state (and Indian country within the state's borders) are described in Section VII.B.9 of this proposed rule. The amounts of the proposed state emissions budgets for the 2023 and 2024 control periods are shown in Table VII.B.4.c-1. Table VII.B.4.c-2 shows illustrative state emissions budgets for

the 2025 and 2026 control periods derived by applying the identified control stringency to the most recent historical data, but these budgets are only illustrative because, under the

proposal, the implemented state emissions budgets for these years will be determined at a future date through application of the proposed budget-setting methodology to data that reflect

the emissions control stringencies finalized in the rulemaking combined with the latest available data on the composition and utilization of the EGU fleet.

TABLE VII.B.4.C-1—PROPOSED CSAPR NO_x OZONE SEASON GROUP 3 STATE EMISSIONS BUDGETS FOR THE 2023 AND 2024 CONTROL PERIODS ^{a b}

State	Proposed emissions budgets for 2023 control period (tons)	Proposed emissions budgets for 2024 control period (tons)
Alabama	6,364	6,306
Arkansas	8,889	8,889
Delaware	384	434
Illinois	7,364	7,463
Indiana	11,151	9,391
Kentucky	11,640	11,640
Louisiana	9,312	9,312
Maryland	1,187	1,187
Michigan	10,718	10,718
Minnesota	3,921	3,921
Mississippi	5,024	4,400
Missouri	11,857	11,857
Nevada	2,280	2,372
New Jersey	799	799
New York	3,763	3,763
Ohio	8,369	8,369
Oklahoma	10,265	9,573
Pennsylvania	8,855	8,855
Tennessee	4,234	4,234
Texas	38,284	38,284
Utah	14,981	15,146
Virginia	3,090	2,814
West Virginia	12,478	12,478
Wisconsin	5,963	5,057
Wyoming	9,125	8,573

Table Notes:

^a The state emissions budget calculations pertaining to Tables VII.B.4.c-1 and VII.B.4.c-2 are described in greater detail in the Ozone Transport Policy Analysis Proposed Rule TSD. Budget calculations and underlying data are also available in Appendix A of that TSD.

^b In the event a final rule in this rulemaking becomes effective after May 1, 2023, the emissions budgets and assurance levels for the 2023 control period would be adjusted under the rule's proposed transitional provisions to ensure that the increased stringency of the new budgets would apply only after the rule's effective date, even though the revised Group 3 trading program would be implemented for most sources as of the start of the 2023 ozone season on May 1, 2023. The 2023 budget amounts shown in Table VII.B.4.c-1 do not reflect these possible adjustments. The transitional provisions are discussed in Section VII.B.11 of this proposed rule.

TABLE VII.B.4.C-2—ILLUSTRATIVE CSAPR NO_x OZONE SEASON GROUP 3 STATE EMISSIONS BUDGETS FOR THE 2025 AND 2026 CONTROL PERIODS

State	Illustrative emissions budgets for 2025 control period (tons)	Illustrative emissions budgets for 2026 control period (tons)
Alabama	6,306	6,306
Arkansas	8,889	3,923
Delaware	434	434
Illinois	7,463	6,115
Indiana	8,714	7,791
Kentucky	11,134	7,573
Louisiana	9,179	3,752
Maryland	1,187	1,189
Michigan	10,759	6,114
Minnesota	3,910	2,536
Mississippi	4,400	1,914
Missouri	10,456	7,246
Nevada	2,372	1,211
New Jersey	799	799
New York	3,763	3,238
Ohio	8,369	8,586
Oklahoma	9,393	4,275
Pennsylvania	8,855	6,819
Tennessee	4,008	4,008

TABLE VII.B.4.C-2—ILLUSTRATIVE CSAPR NO_x OZONE SEASON GROUP 3 STATE EMISSIONS BUDGETS FOR THE 2025 AND 2026 CONTROL PERIODS—Continued

State	Illustrative emissions budgets for 2025 control period (tons)	Illustrative emissions budgets for 2026 control period (tons)
Texas	36,619	21,946
Utah	15,146	2,620
Virginia	2,948	2,567
West Virginia	12,478	10,597
Wisconsin	4,198	3,473
Wyoming	8,573	4,490

5. Variability Limits and Assurance Levels

Like each of the other CSAPR trading programs, the Group 3 trading program currently includes assurance provisions designed to limit the total emissions from the sources in each state (and Indian country within the state's borders) in each control period to an amount close to the state's emissions budget for the control period, consistent with the good neighbor provision's requirement that required emissions reductions must be achieved within the state, while allowing some flexibility beyond the emissions budget to accommodate year-to-year operational variability beyond sources' reasonable ability to control. For each state, the assurance provisions establish an assurance level for each control period, defined as the sum of the state's emissions budget for the control period plus a variability limit, which under the existing Group 3 trading program regulations is 21 percent of the relevant state emissions budget. The purpose of the variability limit is to account for year-to-year variability in EGU operations, which can occur for a variety of reasons including changes in weather patterns, changes in electricity demand, and disruptions in electricity supply from other units or from the transmission grid. Because of the need to account for such variability in operations of each state's EGUs, the fact that emissions from the state's EGUs may exceed the state's emissions budget for a given control period is not treated as inconsistent with satisfaction of the state's good neighbor obligations as long as the total emissions from the EGUs remain below the state's assurance level. Emissions from a state's EGUs above the state's emissions budget but below the state's assurance level are treated in the same manner as emissions below the state's emissions budget in that such emissions are subject to the same requirement to surrender allowances at a ratio of one allowance per ton of

emissions. In contrast, emissions above the state's assurance level for a given control period are strongly discouraged as inconsistent with the state's good neighbor obligations and are subject to an overall 3-for-1 allowance surrender ratio. The establishment of assurance levels with associated extra allowance surrender requirements was intended to respond to the D.C. Circuit's holding in *North Carolina* requiring the EPA to ensure within the context of an interstate trading program that sources in each state are required to address their good neighbor obligations within the state and may not simply shift those obligations to other states by failing to reduce their own emissions and instead surrendering surplus allowances purchased from sources in other states.²⁶³

In this rulemaking, the EPA is not proposing to alter the basic structure of the Group 3 trading program's assurance provisions, which would continue to set an assurance level for each control period equal to the state's emissions budget for the control period plus a variability limit and would continue to apply a 3-for-1 surrender ratio to emissions exceeding the state's assurance level.²⁶⁴ Each assurance level also would continue to apply to the collective emissions of all units within the state and Indian country within the state's borders.²⁶⁵ For the 2023 and 2024 control periods, the EPA proposes to retain the Revised CSAPR Update's methodology for determining each state's variability limit as 21 percent of the state's emissions budget for the control period, except that because the

²⁶³ 531 F.3d at 908.

²⁶⁴ As discussed in Section VII.B.8 of this proposed rule, the EPA is also proposing to establish a new secondary emissions limitation for individual units that would apply in situations where an exceedance of the relevant state's assurance level has occurred.

²⁶⁵ See 40 CFR 97.1002 (definitions of "common designated representative," "common designated representative's assurance level" and "common designated representative's share"), 97.1006(c)(2), and 97.1025.

EPA is proposing to revise the state emissions budgets for these control periods, the EPA proposes to determine the corresponding variability limits as 21 percent of the revised budgets. However, for control periods after 2024, the EPA is proposing a change to the methodology for determining the variability limits. Specifically, the EPA proposes to determine each state's variability limit for the control periods in 2025 or a later year so that, instead of always multiplying the state's emissions budget for the control period by a value of 21 percent, the percentage value used would be the higher of 21 percent or the percentage (if any) by which the total reported heat input of the state's affected EGUs in the control period exceeds the total reported heat input of the state's affected EGUs as reflected in the state's emissions budget for the control period. For example, if the total reported heat input of the state's covered sources for the 2025 control period was 90 percent or 110 percent of the total reported heat input of the state's covered sources for the 2023 control period (*i.e.*, the heat input the EPA would have used in computing the state's 2025 emissions budget), then the state's variability limit for the 2025 control period would be 21 percent of the state's emissions budget, while if the total reported heat input of the state's covered sources for the 2025 control period was 130 percent of the total reported heat input of the state's covered sources for the 2023 control period, then the state's variability limit for the 2025 control period would be 30 percent of the state's emissions budget. The EPA expects that the minimum 21 percent would apply in almost all instances, and that the alternative, higher percentage value would apply only in control periods where operational variability caused an extreme increase relative to the earlier year used in setting the state's emissions budget, which would be a situation

meriting a temporarily higher variability limit and assurance level.

The purpose of the proposed revision to the variability limits is to better align the variability limits for successive control periods with the regularly updated heat input data that would be used in the proposed process for dynamically setting the state emissions budgets. Under EPA's proposed budget-setting process, each emissions budget would be computed using the latest available reported heat input, which for each budget set for a control period in 2025 or a later year would be the heat input for the control period two years before the control period whose budget is being determined (for example, the state emissions budgets for the 2025 control period would be computed in early 2024 using the reported heat input for the 2023 control period). The proposed revised variability limits would be well coordinated with the budgets established using this dynamic budgeting process, because the percentage change in the actual heat input for the control period relative to the earlier-year heat input used in computing the state's emissions budget would be an appropriate measure of the degree of operational variability actually experienced by the state's EGUs in the control period relative to the assumed operating conditions reflected in the state's budget. Setting a variability limit in this manner would be entirely consistent with the overall purpose of including variability limits in the assurance provisions.

The reason the EPA is proposing to use the higher of a fixed 21% or the percentage change in heat input computed as just described is that the EPA believes that, for operational planning purposes, it can be useful for sources to know in advance of the control period a minimum value for what the variability limit could turn out to be. Because a state's actual total heat input for a control period is not known until after the end of the control period, this proposed revision would have the consequence that the state's final variability limit and assurance level for the control period also would not be known until after the control period. However, because the proposed rule provides that the variability limit would always be at least 21 percent, the sources in a state would be able to rely for planning purposes on the knowledge that the assurance level would always be at least 121 percent of the state's emissions budget for the control period. Advance knowledge of the minimum possible amount of the assurance level can be useful to sources, because one way a source can be confident that it

will never incur the 3-for-1 allowance surrender ratio owed for emissions exceeding its state's assurance level is to plan its operations so as to never allow its own emissions to exceed its own share of the state's assurance level for the control period. Knowing that the variability limit would always be at least 21 percent would provide sources with values they could use for such planning purposes.

The EPA believes that 21 percent is a reasonable value to use as the fixed variability limit for the 2023 and 2024 control periods and as the minimum variability limit for the control periods in 2025 and later years. To determine appropriate variability limits for the trading programs established in CSAPR, the EPA analyzed historical state-level heat input variability over the period from 2000 through 2010 as a proxy for emissions variability, assuming constant emissions rates. See 76 FR 48265. Based on that analysis, the variability limits for ozone season NO_x in both CSAPR and the CSAPR Update were set at 21 percent of each state's budget, and these variability limits for the NO_x ozone season trading programs were then codified in 40 CFR 97.510 and 40 CFR 97.810, along with the respective state budgets. For the Revised CSAPR Update, the EPA performed an updated variability analysis for the twelve states being moved into the Group 3 trading program in that rulemaking, evaluating historical state-level heat input variability over the period from 2000 through 2019. The updated analysis again resulted in a variability estimate of 21 percent. The EPA also considered shorter time periods for the updated analysis and found that the resulting variability estimates were not especially sensitive to the particular time period analyzed.²⁶⁶ A further updated analysis for this rulemaking again results in a variability estimate of 21 percent for most states, and although the historical analysis indicates higher percentages for the two states with the smallest total heat input figures in this analysis—Delaware and New Jersey—the EPA does not consider it appropriate to raise the variability limit percentage beyond 21 percent for all other states based on the analytic results for these states, where small absolute heat input figures

²⁶⁶ For details on the original variability analysis for 26 states over the 2000–2010 period, including a description of the methodology, see the Power Sector Variability Final Rule TSD from the CSAPR (EPA–HQ–OAR–2009–0491–4454). For the updated variability analysis for twelve states for the 2000–2019 period, see the Excel file “Historical Variability in Heat Input 2000 to 2019.xls.” Both documents are available in the docket for this proposal.

have resulted in larger variability percentages.²⁶⁷ Based on the consistent conclusions of these multiple analyses, the EPA proposes to continue using 21 percent as the fixed variability limit percentage for the 2023 and 2024 control periods and as the minimum value in the revised approach for establishing variability limits for the control periods in 2025 and later years.

The EPA requests comment on the proposed rule to set variability limits for the 2023 and 2024 control periods as 21 percent of the respective revised state emissions budgets, consistent with the methodology used to determine the variability limits for these control periods set in the Revised CSAPR Update. In addition, the EPA requests comment on whether to set higher variability limits for Delaware and New Jersey for 2023 and 2024 based on the results of the most recent variability analysis. The EPA also requests comment on the proposed rule to establish a revised methodology for setting variability limits for all states for control periods in 2025 and later years, as discussed in this section.

6. Annual Recalibration of Allowance Bank

As discussed in Section VII.B.1.b of this proposed rule, in this rulemaking, the EPA is proposing two revisions to the Group 3 trading program designed to better maintain the control stringency selected in the final rule in this rulemaking. The first proposed revision, discussed Section VII.B.4 of this proposed rule, is to adopt a dynamic budget-setting methodology that would allow state emissions budgets in future years to reflect more accurate information about the composition and utilization of the EGU fleet. The second, complementary, proposed revision is to recalibrate the bank of unused allowances each control period in order to prevent allowance surpluses in individual control periods from accumulating and adversely impacting the ability of the trading program in future control periods to maintain the selected control stringency identified in the rulemaking as necessary to address states' good neighbor obligations with respect to the 2015 ozone NAAQS.

The EPA proposes to begin the bank recalibration process starting with the 2024 control period, after the compliance process for the 2023 control period for all current and newly added states in the Group 3 trading program

²⁶⁷ See the Excel document, “OS Heat Input Variability 2000 to 2021.xls” for updated data, application of the CSAPR variability methodology, and results applied to heat input for 2000 through 2021 for all states and for the region collectively.

has been completed. The recalibration process for each control period would be carried out on or shortly after August 1 of that control period, two months after the compliance deadline for the previous control period, making the proposed date of the first recalibration August 1, 2024. The recalibrations could not take place significantly earlier than August 1 each year because compliance for the previous control period would not be completed until after June 1. However, because data on the amounts of allowances held are publicly available and the total quantity of allowances needed for compliance for the previous control period would be known shortly after the end of that control period, sources and other market participants would be able to ascertain with reasonable accuracy shortly after the end of each control period what degree of recalibration to expect for the next control period, even if the recalibration would not actually be carried out until the following August.

Before undertaking a recalibration process each control period, the EPA would first determine whether the total amount of all banked Group 3 allowances from previous control periods held in all facility accounts and general accounts in the Allowance Management System accounts exceeds the target bank amount. (For this purpose, no distinction would be made between banked Group 3 allowances issued from the state emissions budgets for previous control periods and banked Group 3 allowances issued through the conversion of previously banked Group 2 allowances.) If the total amount of banked Group 3 allowances does not exceed the target bank amount, the EPA would not carry out any recalibration for that control period. If the total amount of unused allowances does exceed the target bank amount, the EPA would determine for each account with holdings of banked Group 3 allowances the account-specific recalibrated amount of allowances, computed as the target bank amount multiplied by the account's total holdings of banked Group 3 allowances and divided by the total amount of banked Group 3 allowances in all accounts, rounded up to the nearest allowance. Finally, the EPA would deduct from each account any banked Group 3 allowances exceeding the account's recalibrated amount of banked allowances.

As the target bank amount used in the recalibration process for each control period, the EPA proposes to use an amount determined as 10.5 percent of the sum of the state emissions budgets for the control period, or half of the sum of the states' proposed minimum

variability limits. The EPA has two reasons for proposing this amount. First, in the transition from CSAPR to the CSAPR Update, where the EPA set a target bank amount 1.5 times the sum of the variability limits, and in the transition from the CSAPR Update to the Revised CSAPR Update, where the EPA set a target bank amount of 1.0 times the sum of the variability limits, in each case the initial bank proved larger than necessary, as total emissions of all sources in the program were less than the budgets. Second, an analysis of year-to-year variability of heat input for the region covered by this proposed rule suggests that the regional heat input for an individual year can be expected to vary by up to 10.5 percent above or below the central trend with 95% confidence. This variability analysis is an application to the entire region of the variability analysis EPA has performed for individual states to establish the variability limit of 21 percent for the states in the trading program.²⁶⁸ When the analysis is performed at the regional level, the data show less year-to-year variation than when the analysis is performed at the individual state level. Within the trading program structure, it is logical to use variability analyzed at the level of individual states to set the variability limits, which apply at the level of individual states, while using variability analyzed at the level of the overall region to set a target level for a bank, which will apply at the level of the overall program.

The annual bank recalibrations will help maintain the control stringency determined to be necessary to address states' good neighbor obligations for the 2015 ozone NAAQS. Moreover, the proposed recalibrations are less complex than alternative approaches would be. For example, the NO_x Budget Trading Program established in the NO_x SIP Call also contained provisions designed to prevent excessive accumulations of banked allowances on program stringency, but those provisions—under the name “progressive flow control”—introduced uncertainty as to whether banked allowances would be usable to offset one ton of emissions or less than one ton of emissions in the current control period. The EPA considers the recalibration mechanism proposed here

²⁶⁸ See the Power Sector Variability Final Rule TSD from CSAPR, available at <https://www.epa.gov/csapr/power-sector-variability-final-rule-tds-for-a-description-of-the-methodology>. Also see the Excel document “OS Heat Input—Variability 2000 to 2021.xls” for updated data, application of the CSAPR variability methodology, and results applied to heat input for 2000 through 2021 for all states and for the region collectively.

to be simpler with less associated uncertainty.

Finally, the EPA observes that the proposed recalibration mechanism is entirely consistent with the Agency's existing authority under 40 CFR 97.1006(c)(6) to “terminate or limit the use and duration” of any Group 3 allowance “to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.” The Administrator proposes to determine that the recalibrations are both necessary and appropriate to ensure that the control stringency selected in this rulemaking is maintained and states' good neighbor obligations with respect to the 2015 ozone NAAQS are addressed.

The EPA requests comment on the proposed bank recalibration provisions and the proposed use of a target bank amount computed as 10.5 percent times the sum of the state emissions budgets for each control period.

7. Unit-Specific Backstop Daily Emissions Rates

While the identified EGU emissions reductions in Section VI of this proposed rule are incentivized and secured primarily through the corresponding seasonal state emissions budgets (expressed as a seasonal tonnage limit for all covered EGUs within a state's borders) described earlier, the EPA is also incorporating backstop daily emissions rates of 0.14 lb/mmBtu for coal-fired steam units serving generators with nameplate capacity greater than or equal to 100 MW in covered states. The backstop emissions rates will first apply in 2024 for coal-fired steam units with existing SCR controls, and in 2027 for coal-fired steam units currently without SCR controls. For a unit that exceeds its applicable backstop daily emissions rate on any day, all emissions on that day exceeding the emissions that would have occurred at the backstop daily emissions rate will be subject to a 3-for-1 allowance surrender ratio instead of the normal 1-for-1 allowance surrender ratio. See Appendix A of the Ozone Transport Policy Proposed Rule TSD for a list of coal-fired steam units serving generators larger than or equal to 100 MW in covered states for which the identified backstop emissions rate would apply starting in either 2024 or 2027.

The EGU NO_x Mitigation Strategies Proposed Rule TSD describes the methodology for deriving the 0.14 lb/mmBtu daily rate limit in more detail. The methodology is summarized as follows. First, consistent with

stakeholders' focus on providing daily assurance of control operation, EPA determined that daily (as opposed to hourly or monthly) was an appropriate time metric for backstop emissions rate limits instituted to ensure operation of controls on high ozone days. The EPA derived the 0.14 lb/mmBtu daily rate limit by determining the particular level of a daily rate that would be comparable in stringency to the 0.08 lb/mmBtu seasonal emissions rate that the Agency has identified as reflecting SCR optimization at existing units.²⁶⁹ The EPA first conducted an empirical exercise using reported daily emissions rate data from existing, SCR-controlled coal units that were emitting at or below 0.08 lb/mmBtu on a seasonal average basis. Recognizing that this seasonal rate reflects the average across a unit's range of varying daily rates reflecting different operation conditions, including some occasions when the SCR control may not be operating or may not be fully optimized, the EPA identified the upper end of the daily emissions rate range for these units. When the EPA examined the daily emissions rate pattern for these units considered to be optimizing their SCRs on a seasonal basis, the EPA observed that over 95 percent of the time, their daily rates were below 0.14 lb/mmBtu. In addition, for these units, less than 1 percent of their seasonal emissions would exceed this daily rate limit.

The EPA conducted this analysis to be consistent with the methodology developed in the 2014 1-hr SO₂ attainment area guidance for identifying "comparably stringent" emissions rates over varying time-periods.²⁷⁰ Appendix C of that guidance describes a series of steps that involve: (1) Compiling emissions data to reflect a distribution of emissions rates with various averaging times, (2) determining the 99th percentile of the average emissions values compiled in the previous step, and then (3) applying "adjustment factors" or ratios of the 99th percentile values to emissions rates to convert them (usually from a short-term rate to a longer-term rate). In this case, the EPA

²⁶⁹ See page 24 of "Guidance for 1-hour SO₂ Nonattainment Area SIP Submission" at https://www.epa.gov/sites/default/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf. "A limit based on the 30-day average of emissions, for example, at a particular level is likely to be a less stringent limit than a 1-hour limit at the same level 1 since the control level needed to meet a 1-hour limit every hour is likely to be greater than the control level needed to achieve the same limit on a 30-day average basis."

²⁷⁰ See Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions available at https://www.epa.gov/sites/default/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.

applied the methodology in reverse to convert a longer-term limit (the seasonal rate of 0.08 lb/mmBtu which was assumed to be equal to a 30-day rate of 0.08 lb/mmBtu) to a comparably stringent short-term limit (a daily rate of 0.14 lb/mmBtu). The EPA requests comment on the proposed incorporation of a backstop daily emissions rate element into the Group 3 trading program and on the proposed methodology for determining the daily emissions rate of 0.14 lb/mmBtu.

In addition, the EPA requests comment on application of the backstop daily emissions rates in the event that an affected unit finds it more economic to retire shortly after the start of the 2027 ozone season in lieu of investing in new NO_x post-combustion control technology. This proposed rule's state emissions budgets would require emissions reductions starting in 2026 commensurate with SCR retrofits at these units regardless of when these unit-level backstop rates are subsequently imposed. The EPA recognizes that such retrofits in practice may be less environmentally efficient compared to imminent retirement that would potentially yield lower cumulative emissions of NO_x and multiple other pollutants over time. The EPA also recognizes that several coal-fired EGUs have been considering retirement by 2028 under compliance pathways available under Clean Water Act effluent guidelines²⁷¹ and the coal combustion residuals rule under the Resource Conservation and Recovery Act.²⁷² 2028 also represents the end of the second planning period under the Regional Haze program, and thus is a significant year in states' planning of strategies to make reasonable progress towards natural visibility at Class I areas.²⁷³ To facilitate a potentially economic and environmentally superior unit-level compliance response across these programs that nonetheless maintains the NO_x reductions required by the state budgets from 2026 forward in this proposed rule, the EPA is requesting comment on potentially deferring the application of the backstop daily rate for large coal EGUs that submit written attestation to the EPA that they make an enforceable commitment to retire by no later than the end of calendar year 2028. EPA anticipates that units failing to retire contrary to their attestation would become subject to the backstop emissions rate in the 2029 ozone season, and would likely be subject to other

²⁷¹ See 40 CFR 423.11(w).

²⁷² See 40 CFR 257.103(b).

²⁷³ See 40 CFR 51.308(f).

appropriate enforcement proposed rule under the Clean Air Act or other relevant authorities.

8. Unit-Specific Emissions Limitations Contingent on Assurance Level Exceedances

As emphasized by the D.C. Circuit in its decision invalidating CAIR, under the CAA's good neighbor provision, emissions "within the State" that contribute significantly to nonattainment or interfere with maintenance of a NAAQS in another state must be prohibited. *North Carolina v. EPA*, 531 F.3d 896, 906–908 (D.C. Cir. 2008). The CAIR trading programs contained no provisions limiting the degree to which a state could rely on net purchased allowances as a substitute for making in-state emissions reductions, an omission which the court found was inconsistent with the requirements of the good neighbor provision. *Id.* In response to that holding, the EPA established the CSAPR trading programs' assurance provisions to ensure that, in the context of a flexible trading program, the emissions reductions required under the good neighbor provision in fact will take place within the state. The EPA believes the assurance provisions have generally been successful in achieving that objective, as evidenced by the fact that since the assurance provisions took effect in 2017, out of the nearly 300 instances where a given state's compliance with the assurance provisions of a given CSAPR trading program for a given control period has been assessed, a state's collective emissions have exceeded the applicable assurance level only four times.

Unfortunately, the EPA also recognizes that the assurance provisions' very good historical compliance record is not good enough. The four past exceedances all occurred under the Group 2 trading program: Sources in Mississippi collectively exceeded their applicable assurance levels in the 2019 and 2020 control periods, and sources in Missouri collectively exceeded their applicable assurance levels in the 2020 and 2021 control periods.²⁷⁴ Both of the

²⁷⁴ Information on the assurance level exceedances in the 2019 and 2020 control periods is available in the final notices concerning EPA's administration of the assurance provisions for those control periods. 85 FR 53364 (August 28, 2020); 86 FR 52674 (September 22, 2021). The EPA will publish an analogous final notice for the 2021 control period by October 1, 2022, and will also publish a preliminary notice by August 1, 2022. At this time, information on the relevant Missouri assurance level for the 2021 control period is available at 40 CFR 97.806(c)(2) and 97.810 and preliminary data on Missouri units' emissions of

exceedances by Missouri sources could easily have been avoided if the owner and operator of several SCR-equipped, coal-fired steam units had not chosen to idle the units' controls and rely instead on net out-of-state purchased allowances. The exceedances were large, and ample quantities of allowances to cover the resulting 3-for-1 allowance surrender requirements were purchased in advance, suggesting that the assurance level exceedances may have been anticipated as a possibility. In the case of the Mississippi exceedances, the exceedances were smaller, operational variability (manifesting as increased heat input) appears to have been a material contributing factor, and the EPA has not concluded that the owners and operators anticipated the exceedances. However, an additional contributing factor was the fact that several large, gas-fired steam units without SCR controls emitted NO_x at average rates much higher than the average emissions rates the same units had achieved in previous control periods. In short, while the Missouri exceedances appear far more significant, EPA's analysis indicates that all four past exceedances could have been avoided if the units most responsible had achieved emissions rates more comparable to the same units' previous performance. In EPA's view, the operation of the Missouri units in particular—although not prohibited by the current regulatory requirements—cannot be reconciled with the statutory requirements of the good neighbor provision. The fact that such operation is not prohibited by the current regulations therefore indicates a deficiency in the current regulatory requirements.

To correct the deficiency in the regulatory requirements, the EPA proposes in this rulemaking to revise the Group 3 trading program regulations to establish an additional emissions limitation to more effectively deter avoidable assurance level exceedances. Because the pollutant involved is ozone season NO_x and the particular sources for which deterrence is most needed are located in states that are proposed to transition soon from the Group 2 trading program to the Group 3 trading program, the EPA is proposing to promulgate the strengthening provisions as revisions to the Group 3 trading program regulations rather than the Group 2 trading program regulations.²⁷⁵

NO_x during the 2021 ozone season are available at ampd.epa.gov.

²⁷⁵ The EPA believes that the occurrence of avoidable assurance level exceedances under the

The two current emissions-related compliance requirements in the Group 3 trading program regulations are both structured in the form of requirements to hold allowances. The first requirement applies at the source level: Specifically, at the compliance deadline after each control period, the owners and operators of each source covered by the program must surrender a quantity of allowances that is determined based on the emissions from the units at the source during the control period. The second requirement applies at the designated representative level (which typically is the owner or operator level): If the state's sources collectively emit in excess of the state's assurance level, the owners and operators of each set of sources determined to have contributed to the exceedance must surrender an additional quantity of allowances. As long as a source's owners and operators comply with these two allowance surrender requirements (and meet certain other requirements not related to the amounts of the sources' emissions), they are in compliance with the program.

In light of the operation of the Missouri sources, the EPA is doubtful that strengthening the assurance provisions by increasing allowance surrender requirements at the unit, source, or designated representative level would create a sufficient deterrent. Accordingly, the EPA is proposing instead to add a new, unit-level emissions limitation structured as a prohibition to emit NO_x in excess of a defined amount. A violation of the prohibition would not trigger additional allowance surrender requirements beyond the surrender requirements that would otherwise apply, but would trigger the possible application of the CAA's enforcement authorities. Because the purpose of the new unit-level emissions limitation would be to deter conduct causing exceedances of a state's assurance level, the EPA proposes to

Group 2 trading program, combined with the express statutory directive that good neighbor obligations must be addressed "within the state," and through "prohibition," would also provide a sufficient legal basis for the Agency to promulgate the same revisions to the assurance provisions for all the other CSAPR trading programs. The EPA is not proposing to do so at this time because the Agency has seen no reason to expect exceedances of the assurance levels under any of the other CSAPR trading programs by any of the states that will remain subject to the respective trading programs after this rulemaking, except possibly by Missouri under the CSAPR NO_x Annual Trading Program. The EPA expects that reductions in Missouri's seasonal NO_x emissions sufficient to comply with the proposed provisions of the revised Group 3 trading program, including the secondary emissions limitations, would also prevent exceedances of Missouri's currently applicable assurance level for annual NO_x emissions.

condition applicability of the new limitation on (1) the occurrence of an exceedance of the state's assurance level for the control period, and (2) the apportionment of at least some of the responsibility for the assurance level exceedance to the set of units represented by the unit's designated representative. Apportionment of responsibility for the assurance level exceedance would be carried out according to the existing assurance provision procedures and would therefore depend on the designated representative's shares of both the state's total emissions for the control period and the state's assurance level for the control period. The new emissions limitation would be in addition to, not in lieu of, the other requirements of the Group 3 trading program. This point would be made explicit by relabeling the source-level allowance holding requirement, currently called the "emissions limitation," as the "primary emissions limitation" and labeling the new unit-level requirement as the "secondary emissions limitation." (The regulations label the designated representative-level requirement as "compliance with the . . . assurance provisions.")

The EPA proposes to define the unit-level secondary emissions limitation by formula to reflect the amount of additional NO_x emissions caused by the unit's deviation from a benchmark seasonal average NO_x emissions rate during the control period, where the benchmark seasonal average NO_x emissions rate for the unit would be based on emissions rates the unit has achieved in the past plus a 25 percent margin. The EPA also proposes to use a floor for past performance of 0.08 lb/mmBtu (yielding 0.10 lb/mmBtu when the 25 percent margin is added), exclude control periods where the unit operated in less than 10 percent of the hours (in order to avoid data that might be unrepresentative), and screen out instances where the amount of additional emissions caused by the poor performance is less than 50 tons. Specifically:

- The EPA proposes to define a unit's secondary emissions limitation for a control period, in tons of NO_x, as the sum of 50 tons plus the product of (1) the unit's benchmark seasonal average emissions rate times (2) the unit's actual heat input for the control period, except that if the unit operated during less than 10 percent of the hours in the control period, no secondary emissions limitation would be defined for the unit for that control period.
- The EPA proposes to calculate the benchmark seasonal average NO_x

emissions rate for a unit for this purpose, in lb NO_x/mmBtu, as the higher of (1) 0.10 lb/mmBtu or (2) 125 percent of the unit's lowest seasonal average NO_x emissions rate in a previous control period under the CSAPR NO_x Ozone Season Group 1, Group 2, or Group 3 Trading Program, excluding any control periods where the

unit operated for less than 10 percent of the hours in the ozone season.²⁷⁶ Table VII.B.8–1 shows the secondary emissions limitations that the proposed formula would have produced and which units would have exceeded those limitations if the limitations and formula had been in effect for the Group 2 trading program in 2019, 2020, and 2021 when assurance level exceedances

occurred in Mississippi and Missouri. The EPA believes that in each case the formula functions in a reasonable manner, and the units identified as exceeding their respective secondary emissions limitations are sources for which an enforcement deterrent under CAA sections 113 and 304 would have been appropriate to compel better control of NO_x emissions.

TABLE VII.B.8–1—ILLUSTRATIVE RESULTS OF APPLYING PROPOSED SECONDARY EMISSIONS LIMITATION IN PREVIOUS INSTANCES OF ASSURANCE LEVEL EXCEEDANCES

Owner/operator	Unit	Benchmark NO _x emissions rate (lb/mmBtu)	Actual NO _x emissions rate (lb/mmBtu)	Secondary emissions limitation (tons)	Actual NO _x emissions (tons)	Exceedance (tons)
<i>Mississippi—2019</i>						
Miss. Power	Watson 4	0.137	0.176	458	524	66
Miss. Power	Watson 5	0.215	0.349	1,247	1,943	696
<i>Mississippi—2020</i>						
Entergy Miss.	Andrus 1	0.224	0.289	1,219	1,508	289
Miss. Power	Watson 5	0.215	0.286	1,086	1,381	295
<i>Missouri—2020</i>						
Assoc. Elec. Coop.	New Madrid 1	0.135	0.670	961	4,524	3,563
Assoc. Elec. Coop.	New Madrid 2	0.131	0.497	866	3,108	2,242
Assoc. Elec. Coop.	Thomas Hill 1	0.123	0.526	374	1,384	1,010
Assoc. Elec. Coop.	Thomas Hill 2	0.122	0.537	548	2,187	1,639
Assoc. Elec. Coop.	Thomas Hill 3	0.104	0.195	780	1,374	594
<i>Missouri—2021</i>						
Assoc. Elec. Coop.	New Madrid 1	0.135	0.652	353	1,466	1,113
Assoc. Elec. Coop.	New Madrid 2	0.131	0.611	1,054	4,700	3,646
Assoc. Elec. Coop.	Thomas Hill 1	0.123	0.146	421	440	19
Assoc. Elec. Coop.	Thomas Hill 2	0.122	0.400	600	1,801	1,201

For further illustrations of the application of the proposed formula and secondary emissions limitation to other units in the states proposed to be subject to the expanded Group 3 trading program in the control periods from 2016 through 2021, see the spreadsheet “Illustrative Calculations Using Proposed Secondary Emissions Limitation Formula”, available in the docket. The EPA notes that, with the exception of the units listed in Table VII.B.8–1, no unit shown in the spreadsheet as having emissions exceeding the illustrative secondary emissions limitation calculated for the unit would have violated the proposed prohibition because no violation would occur in the absence of an exceedance of the assurance level and apportionment of responsibility for a share of the exceedance to the unit under the assurance provisions.

The EPA requests comment on the proposal to establish a secondary emissions limitation for the Group 3 trading program as described in this section. The EPA specifically requests

comment on the proposed form of the secondary emissions limitation, the proposed formula for computing each unit's secondary emissions limitation, and the proposed values for the screening parameters used in the calculations.

9. Unit-Level Allowance Allocation and Recordation Procedures

In the Revised CSAPR Update, the EPA established default procedures for allocating CSAPR NO_x Ozone Season Group 3 allowances (“Group 3 allowances”) in amounts equal to each state emissions budget for each control period among the sources in the state for use in complying with the Group 3 trading program. The EPA also provided states with several options to submit SIP revisions which, if approved, would result in the replacement of EPA's allowance allocations with state-determined allowance allocations for the 2022 control period and beyond. The current regulations (*i.e.*, before this proposed rule) provide that EPA's allocations and allocation procedures

apply for the 2021 control period and, by default, for subsequent control periods unless and until a state provides state-determined allowance allocations under an approved SIP revision.

The current default allocation process for the Group 3 trading program established in the Revised CSAPR Update involves three main steps. First, a portion of each state emissions budget for each control period is reserved for potential allocation to units that are subject to allowance holding requirements and that would not otherwise receive allowance allocations in the overall allocation process. Under the current Group 3 trading programs, the reserved allowances are made available generally (but not exclusively²⁷⁷) to “new” units—which for purposes of the Revised CSAPR Update means units commencing commercial operation on or after January 1, 2019—through a “new unit set-aside” established for qualifying units in each state and, if areas of Indian country exist within the state's borders, a separate “Indian country new unit set-

²⁷⁶ In proposing a formulation for a benchmark rate for the specific regulatory purpose of defining a secondary emissions limitation under the Group 3 trading program, the EPA is not expressing a view

that the same formulation of a benchmark rate would be suitable for any other regulatory purpose.

²⁷⁷ The units qualifying for allocations from a new unit set-aside may include not only units that

have recently started operating but also units that previously received, but are no longer eligible to receive, allocations from the unreserved portion of the budget as “existing” units.

aside” for qualifying units in such Indian country. Second, in advance of each control period, the unreserved portion of the state budget is allocated among the state’s eligible “existing” units—which for purposes of the Revised CSAPR Update generally means units that commenced commercial operation before January 1, 2019—and the allocations are recorded in the respective sources’ compliance accounts. Finally, after the control period but before the compliance deadline by which sources must hold allowances to cover their emissions for the control period, allowances from the reserved portions of the budget are allocated to qualifying units, any remaining reserved allowances not allocated to qualifying units are allocated among the state’s existing units, and the allocations are recorded in the respective sources’ compliance accounts.

In this rulemaking, the EPA would retain the overall three-step allocation process summarized above but is proposing revisions to each step to better address units in Indian country and to better coordinate the unit-level allocation process with the proposed dynamic budget-setting process discussed in Section VII.B.4 of this proposed rule. Like the allocation process established in CSAPR, the CSAPR Update, and the Revised CSAPR Update, the revised process proposed in this rulemaking would be designed to provide default allowance allocations to all units that are subject to allowance holding requirements, including, for the first time under any CSAPR trading program, an existing EGU in Indian country not covered by a state’s CAA implementation planning authority. The proposed revisions to the three steps are discussed in Sections VII.B.4.a, VII.B.4.b, and VII.B.4.c of this proposed rule, respectively.

Echoing the approach to unit-level allocations followed in CSAPR, the CSAPR Update, and the Revised CSAPR Update, in this rulemaking, EPA is again proposing to provide states with several options to submit SIP revisions which, if approved, would result in the replacement of EPA’s default allocations with state-determined allocations for subsequent control periods.

Specifically, the proposed regulations would provide that EPA’s allocations and allocation procedures will apply for the 2023 control period and, by default, for subsequent control periods unless and until a state provides state-determined allocations under an approved SIP revision. The options to submit SIP revisions that would accomplish this purpose are discussed

in Section VII.D of this document. Similarly, for a covered area of Indian country not subject to a state’s CAA implementation planning authority, a tribe could elect to work with the EPA under the Tribal Authority Rule to develop a full or partial tribal implementation plan under which the tribe would determine allowance allocations that would replace EPA’s default allocations for subsequent control periods.

a. Set-Asides of Portions of State Emissions Budgets for New Units

As the first step in the default allocation process that the EPA has applied under CSAPR, the CSAPR Update, and the Revised CSAPR Update for any control period where a state does not employ an alternative allocation process pursuant to an approved SIP revision, EPA has reserved a portion of the state’s emissions budget for potential allocation to units that are subject to allowance holding requirements and that would not otherwise receive allowance allocations in the overall allocation process. Consistent with the budget-setting approach in those rulemakings, where the state emissions budgets for all future control periods were determined in the initial rulemakings, the amounts of the reserved portions of the budgets were also determined in the initial rulemakings.²⁷⁸

The units for which portions of the budgets were reserved in set-asides have fallen into two main categories: First, units for which the data needed to determine allowance allocations does not exist at the time when the allocations for other units were being determined—*i.e.*, “new” units²⁷⁹—and second, units that would be left out if a state chooses to replace EPA’s default allocations with state-determined allocations—*i.e.*, any units in Indian country not covered by a state’s CAA implementation planning authority. Because there were no existing units in what the EPA understood to be Indian country for purposes of CSAPR, the CSAPR Update, and the Revised CSAPR Update, potential units in Indian country were considered to be a

subcategory of “new” units, and the two types of set-asides that have been created are “new unit set-asides” and “Indian country new unit set-asides.” The principal difference between these two types of set-asides under the regulations for all of the CSAPR trading programs has been that a state can take over administration of the allowances allocated to a new unit set-aside from the EPA through an approved SIP revision but cannot take over administration of the allowances allocated to an Indian country new unit set-aside.

In this rulemaking, the EPA is proposing several revisions affecting the establishment of set-asides. The first proposed revision, which is largely unrelated to the other aspects of this rulemaking, would update the regulations for the Group 3 trading program²⁸⁰ to reflect the D.C. Circuit’s holding in *ODEQ v. EPA* that the relevant states have initial CAA implementation planning authority in non-reservation areas of Indian country until displaced by a demonstration of tribal jurisdiction over such an area.²⁸¹ Consistent with this holding, EPA is proposing to revise language in the Group 3 trading program regulations that, for purposes of allocating allowances from a given state’s emissions budget, currently distinguishes between (1) the set of units within the state’s borders that are not in Indian country and (2) the set of units within the state’s borders that are in Indian country. As revised, the provisions would distinguish between (1) the set of units within the state’s borders that are not in Indian country or are in areas of Indian country covered by the state’s CAA implementation planning authority and (2) the set of units within the state’s borders that are in areas of Indian country not covered by the state’s CAA implementation planning authority. The revised language would more accurately distinguish which units are, or are not, covered by a state’s CAA implementation planning authority, which is the underlying purpose for which the term “Indian country” is currently used in the allowance allocation provisions. The effect of the proposed revision would be that any

²⁷⁸ Under the current regulations for each of the CSAPR trading programs, when a unit that has received allocations as an “existing” unit ceases operation, after a specified number of control periods the unit loses the allocations, which are then allocated to the state’s new unit set-asides for subsequent control periods.

²⁷⁹ A unit that has received allocations as an “existing” unit, then loses its allocations because of non-operation, and then later resumes operation is treated as a type of “new” unit for allocations purposes.

²⁸⁰ As further discussed in Section VII.B.12 of this proposed rule, the EPA is also proposing to make this revision to the regulations for the other CSAPR trading programs in addition to the Group 3 trading program.

²⁸¹ For additional discussion of the *ODEQ v. EPA* decision and other issues related to the CAA implementation planning authority of states, tribes, and the EPA in various areas of Indian country, see Section IV.C.2 of this proposed rule.

units located in areas of “Indian country” as defined in 18 U.S.C. 1151 that are covered by a state’s CAA implementation planning authority would be treated for allowance allocation purposes in the same manner as units in areas of the state that are not Indian country, consistent with the *ODEQ* holding.²⁸²

The remaining proposed revisions, which are interrelated, concern the types of set-asides that in the context of this proposal will best accomplish the goal of ensuring the availability of allocations to units that are subject to allowance holding requirements and that would not otherwise receive allowance allocations. One proposed revision to the types of set-asides addresses allocations to existing units in Indian country. The revised geographic scope of the Group 3 trading program under this proposal would for the first time include an existing EGU in Indian country not covered by a state’s CAA implementation planning authority—the Bonanza coal-fired unit in the Uintah and Ouray Reservation within Utah’s borders. In order to provide an option for Utah (or a similarly situated state in the future) to replace EPA’s default allowance allocations to most existing units with state-determined allocations through a SIP revision while continuing to ensure the availability of a default allocation to the Bonanza unit (or similarly situated units in the future), the EPA proposes to revise the Group 3 trading program regulations to provide for “Indian country existing unit set-asides.” Specifically, for each state and for each control period where the inventory of units used to compute the state’s emissions budget includes one or more existing units²⁸³ in an area of Indian country not covered by the state’s CAA implementation planning authority, the EPA would reserve a portion of the state’s emissions budget in an Indian country existing unit set-aside for the unit or units. The amount

²⁸² The EPA notes that the units that would be treated for allocation purposes in the same manner as units not in Indian country would include units in any areas of Indian country subject to a state’s CAA implementation planning authority, whether those are non-reservation areas (consistent with *ODEQ*) or reservation areas (such as areas of Indian country within Oklahoma’s borders covered by the EPA’s October 1, 2020 approval of Oklahoma’s request under SAFETEA, as discussed in Section IV.C.2 of this proposed rule).

²⁸³ In coordination with the dynamic budgeting process discussed in Section VII.B.4 of this proposed rule, each unit included in the unit inventory used to determine a state’s emissions budget for a given control period in 2025 or a later year would be considered an “existing” unit for that control period for purposes of the determination of unit-level allowance allocations. In other words, there would no longer be a single fixed date that would divide “existing” from “new” units.

of each Indian country existing unit set-aside would equal the sum of the default allocations that the units covered by the set-aside would receive if the allocations to all existing units within the state’s borders were computed according to EPA’s default allocation procedure (which is discussed in Section VII.B.9.b of this proposed rule). Immediately after determining the amount of a state’s emissions budget for a control period (and after reserving a portion for potential allocation to new units, as discussed below), the EPA would first determine the default allocations for all existing units within the state’s borders, then allocate the appropriate quantity of allowances to the Indian country existing unit set-aside, then allocate the allowances from the set-aside to the covered units in Indian country, and finally record the allocations in the sources’ compliance accounts at the same time as the allocations to other sources not in Indian country. The existence of the Indian country existing unit set-aside thus would have no substantive effect unless and until the relevant state chose to replace EPA’s default allowance allocations through a SIP revision, in which case the state would have the ability to establish state-determined allocations for the units subject to the state’s CAA implementation planning authority while the EPA would continue to administer the Indian country existing unit set-aside for the units in Indian country not covered by the state’s CAA implementation planning authority.²⁸⁴ The EPA believes the proposal to establish Indian country existing unit set-asides would accomplish the objective of allowing states to control allowance allocations to units covered by their CAA implementation planning authority while providing equitable allocations to units in Indian country not covered by such authority.

The remaining revisions to the types of set-asides address the set-asides used to ensure availability of allowance allocations to *new* units in light of the division of the budget for *existing* units into a reserved portion for existing units in Indian country and an unreserved portion for other existing units. Under the current Group 3 trading program regulations, allowances for new units are provided from separate new unit set-

²⁸⁴ As noted in Section VII.D, of this proposed rule a tribe could elect to work with EPA under the Tribal Authority Rule to develop a full or partial tribal implementation plan under which the tribe would determine allowance allocations for units in the relevant area of Indian country that would replace EPA’s default allocations for subsequent control periods.

asides and Indian country new unit set-asides. The EPA proposes to combine these two types of set-asides starting with the 2023 control period by eliminating the Indian country new unit set-asides and expanding eligibility for allocations from the new unit set-asides to include units anywhere within the relevant states’ borders. However, as with the Indian country new unit set-asides under the current regulations, the EPA would continue to administer the new unit set-asides in the event a state chose to replace EPA’s default allocations to existing units with state-determined allocations, thereby ensuring the availability of allocations to any new units not covered by a state’s CAA implementation planning authority.

The reason for the proposed revisions to the new unit set-asides and Indian country new unit set-asides is to avoid unnecessary and potentially inequitable changes to the degree to which individual existing units contribute to, or benefit from, the new unit set-asides. Under the current regulations, the allowances used to establish these set-asides are reserved from each state emissions budget before determination of the allocations from the unreserved portion of the budget to existing units, so that certain existing units—generally those receiving the largest allocations—contribute to creation of the set-asides through roughly proportional reductions in their allocations. Later, if any allowances in a set-aside are not allocated to qualifying new units, the remaining allowances are reallocated to the existing units in proportion to their initial allocations from the unreserved portion of the budget, so that certain existing units—again, generally those receiving the largest allocations—benefit from the reallocations in rough proportion to their previous contributions.²⁸⁵ The EPA believes maintaining this symmetry, where the same existing units—whether in Indian country or not—both contribute to and potentially benefit from the set-asides, is a reasonable policy objective, and doing so requires that the EPA continue to administer the new unit set-asides in the event a state chooses to replace EPA’s default allocations to existing units with state-determined allocations, because otherwise the EPA would be unable to ensure that the units in Indian country would receive an appropriate

²⁸⁵ Allowances from an Indian country new unit set-aside that are not allocated to qualifying new units are first transferred to the state’s new unit set-aside, and if the allowances are still not allocated to qualifying new units, the allowances are then reallocated to the state’s existing units.

share of any reallocated allowances.²⁸⁶ Since the principal difference between the new unit set-asides and the Indian country new unit set-asides under the current regulations is that the EPA continues to administer the Indian country new unit set-asides in the event a state chooses to replace EPA’s default allocations with state-determined allocations, if under the revised regulations the EPA would need to continue to administer the new unit set-asides, then there would no longer be any reason to establish separate Indian country new unit set-asides.

With respect to the total amounts of allowances that would be set aside for potential allocation to new units from the emissions budgets for each state, for the control periods in 2023 and 2024 (but not for subsequent control periods,

as discussed below), EPA proposes to establish total set-aside amounts equal to the projected amounts of emissions from any planned units in the state for the control period, plus an additional 2% of the state emissions budget to address any unknown new units. For example, if planned units in a state are projected to emit 3% of the state’s NO_x ozone season emissions budget, then the new unit set-aside for the state would be set at 5 percent, which is the sum of the minimum 2% set-aside plus an additional 3 percent for planned units. This is the same approach previously used to establish the amounts of new unit set-asides in CSAPR, the CSAPR Update, and the Revised CSAPR Update for all the CSAPR trading programs. See, e.g., 76 FR 48292 (August 8, 2011). As under the Revised CSAPR Update, EPA

proposes to make an exception for New York for the 2023 and 2024 control periods, establishing a total new unit set-aside amount for each control period of 5 percent of the state’s emissions budget, with no additional consideration for planned units, because this approach is consistent with New York’s preferences as reflected in an approved SIP addressing allowance allocations for the Group 2 trading program. Because the amounts of the state emissions budgets for the 2023 and 2024 control periods would be determined in the rulemaking, the amounts of the new unit set-asides for these control periods would also be determined in the rulemaking. The proposed amounts are shown in Tables VII.B.9.a-1 and VII.B.9.a-2 of this proposed rule.

TABLE VII.B.9.a-1—PROPOSED CSAPR NO_x OZONE SEASON GROUP 3 NEW UNIT SET-ASIDE (NUSA) AMOUNTS FOR THE 2023 CONTROL PERIOD^a

State	Emissions budgets (tons)	New unit set-aside amount (percent)	New unit set-aside amount (tons)
Alabama	6,364	3	191
Arkansas	8,889	2	178
Delaware	384	14	54
Illinois	7,364	5	368
Indiana	11,151	2	223
Kentucky	11,640	2	233
Louisiana	9,312	2	186
Maryland	1,187	2	24
Michigan	10,718	4	429
Minnesota	3,921	2	78
Mississippi	5,024	2	100
Missouri	11,857	2	237
Nevada	2,280	6	137
New Jersey	799	2	16
New York	3,763	5	188
Ohio	8,369	5	418
Oklahoma	10,265	2	205
Pennsylvania	8,855	3	266
Tennessee	4,234	2	85
Texas	38,284	2	766
Utah	14,981	3	449
Virginia	3,090	5	155
West Virginia	12,478	2	250
Wisconsin	5,963	2	119
Wyoming	9,125	3	274

Table Notes:

^aIn the event a final rule in this rulemaking becomes effective after May 1, 2023, the emissions budgets for the 2023 control period would be adjusted under the rule’s proposed transitional provisions to ensure the new budgets would apply only after the rule’s effective date, even though the revised Group 3 trading program would be implemented for most sources as of the start of the 2023 ozone season on May 1, 2023. The 2023 budget amounts shown in Table VII.B.9.a-1 do not reflect these possible adjustments. The transitional provisions are discussed in Section VII.B.11 of this proposed rule.

²⁸⁶If units in Indian country were unable to share in the benefits of reallocation of allowances from the new unit set-asides, it would be possible to achieve a different form of symmetry by simultaneously exempting the units in Indian

country from the obligation to share in the contribution of allowances to the new unit set-asides. However, some stakeholders might view this alternative as potentially inequitable because existing units in Indian country would then make

no contributions toward the new unit set-aside while other existing units would still be required to do so.

TABLE VII.B.9.a-2—PROPOSED CSAPR NO_x OZONE SEASON GROUP 3 NEW UNIT SET-ASIDE (NUSA) AMOUNTS FOR THE 2024 CONTROL PERIOD

State	Emissions budgets (tons)	New unit set-aside amount (percent)	New unit set-aside amount (tons)
Alabama	6,306	3	189
Arkansas	8,889	2	178
Delaware	434	14	61
Illinois	7,463	5	373
Indiana	9,391	2	188
Kentucky	11,640	2	233
Louisiana	9,312	2	186
Maryland	1,187	2	24
Michigan	10,718	4	429
Minnesota	3,921	2	78
Mississippi	4,400	2	88
Missouri	11,857	2	237
Nevada	2,372	6	142
New Jersey	799	2	16
New York	3,763	5	188
Ohio	8,369	5	418
Oklahoma	9,573	2	191
Pennsylvania	8,855	3	266
Tennessee	4,234	2	85
Texas	38,284	2	766
Utah	15,146	3	454
Virginia	2,814	5	141
West Virginia	12,478	2	250
Wisconsin	5,057	2	101
Wyoming	8,573	3	257

For control periods in 2025 and later years, the EPA proposes to allocate a total of 2% of each state emissions budget to a new unit set-aside, with no additional amount for planned new units. The amounts of the set-asides for each state and control period would be computed when the emissions budgets for the control period are established, by May 1 of the year before the year of the control period. The procedure for determining the amounts of the set-asides based on the amounts of the state emissions budgets would be codified in the Group 3 trading program regulations and would reflect the same percentage of the emissions budget for all states.

The purpose of the proposed change to the procedure for establishing the amounts of the set-asides is to coordinate with the dynamic budget-setting process that would also become effective as of the 2025 control period. As discussed in Section VII.B.4 of this proposed rule, under the dynamic budget-setting process, each state’s budget for each control period would be computed using fleet composition information and the total ozone season heat input reported by all affected units in the state for the latest control period before the budget-setting computations, which would be 2 years before the control period for which the budgets are being determined. (For example, 2025 emissions budgets would be based on

2023 fleet composition and heat input data.) Moreover, as discussed in Section VII.B.9.b of this proposed rule, all units whose heat input was used in the budget computations for a given control period would be eligible to receive allocations as “existing” units in that control period. Consequently, by the 2025 control period, all or almost all units that commence commercial operation before issuance of a final rule in this rulemaking would be considered “existing” units for purposes of budget-setting and allocations, and units commencing commercial operation after issuance of a final rule generally would be considered “existing” units for all but their first two full control periods of operation (and possibly a preceding partial control period). Given that new units would not be relying on the new unit set-asides as a permanent source of allowances, as is the case for “new” units under the other CSAPR trading programs, the EPA believes smaller set-asides would be sufficient.

The EPA requests comment on the proposals to establish Indian country existing unit set-asides, eliminate Indian country new unit set-asides, and expand eligibility for allocations from new unit set-asides to include units in Indian country for control periods in 2023 and later years. In the alternative, the EPA requests comment on establishing emissions budgets (and assurance levels

and new unit set-asides) for the Uintah and Ouray Reservation separate from the emissions budgets (and assurance levels, new unit set-asides, and Indian country new unit set-asides) established for the remaining lands within Utah’s borders, and otherwise retaining the structure of prior CSAPR trading programs’ approach to allocations to new units in Indian country (*i.e.*, keeping the Indian country new unit set-asides, and not expanding eligibility for allocations from the new unit set-asides). The EPA also requests comment on the proposed new unit set-aside amounts for the 2023 and 2024 control periods, the proposed procedure for establishing the new unit set-aside amounts for the control periods in 2025 and later years, and the proposed procedure for establishing the Indian country existing unit set-aside amounts for the control periods in 2023 and later years.

b. Allocations to Existing Units, Including Units That Cease Operation

In conjunction with the new and revised state emissions budgets for the Group 3 trading program proposed in this rulemaking, the EPA is necessarily proposing new unit-level allocations of Group 3 allowances to existing units.²⁸⁷

²⁸⁷ The proposed revisions to the procedures for computing unit-level allowance allocations in this rulemaking apply only to the Group 3 trading

The procedure that the EPA proposes to employ to compute the unit-level allocations is very similar but not identical to the procedure used to compute unit-level allocations for units subject to the Group 3 trading program in the Revised CSAPR Update. The steps of the proposed procedure for determining allocations from each state emissions budget for each control period, are described in detail in the Unit-Level Allowance Allocations Proposed Rule TSD. The steps are summarized later, with changes from the procedure followed in the Revised CSAPR Update noted.

In the first step, the EPA would identify the list of units eligible to receive allocations for the control period, which would be the same set of units whose heat input was used in computing the state's emissions budget for the control period (except any units that are included in the budgets as "new" units, which would receive allocations from the new unit set-asides instead). The unit inventories used to compute emissions budgets for the 2023 and 2024 control periods would be determined in the rulemaking in the same manner as in the Revised CSAPR Update. The unit inventories used to compute emissions budgets and unit-level allocations for control periods in 2025 and later years would be determined in the year before the control period in question based on the latest reported emissions and operational data, which is an extension of the methodology used in the Revised CSAPR Update to reflect more recent data (for example, the unit inventories used to compute 2025 budgets and allocations would reflect reported data for the 2023 control period). The procedures for updating the unit inventories for 2023 and 2024 and for 2025 and beyond are discussed in Section VII.B.4 of this proposed rule, and the criteria that the EPA has applied to determine whether a unit's scheduled retirement is sufficiently certain to serve as a basis for adjusting emissions budgets and unit-level allocations are discussed in Section VI.B and in the Ozone Transport Policy Analysis Proposed Rule TSD. With regard to the use of the inventories from the budget-setting procedure in setting unit-level allocations, in the Revised CSAPR Update, the inventories used to establish the budgets were generally also used to compute unit-level

program. In this rulemaking, the EPA is not proposing changes to or reopening the methodology for computing the amounts of allowances allocated to any unit under any other CSAPR trading program.

allocations, except that units that commenced construction after January 1, 2019, were not treated as eligible to receive allocations as existing units and instead received allocations from the new unit set-asides. Under this rulemaking, any unit whose heat input is used to set a state's emissions budget for a given control period would also be eligible to receive allocations as an existing unit for that control period.

The EPA notes that this proposal to base the list of eligible units on the list of units that reported heat input in the control period 2 years earlier than the control period for which allocations are being determined would represent a revision to the current regulations concerning the treatment of allocations to retired units. Under the current regulations, units that cease operations for 2 consecutive control periods continue to receive allocations as existing units for 3 additional years (that is, a total of 5 years) before the allowances they would otherwise have received are reallocated to the new unit set-aside for the state. Under the proposal in this rulemaking, units that cease operation would receive allocations for only two full control periods of non-operation. While the EPA has in prior transport rulemakings noted a qualitative concern that ceasing allowance allocations prematurely could distort the economic incentives of EGUs to continue operating when retirement is more economical, the EPA believes current market conditions are such that a continuation of allowance allocations to retiring units likely has no more than a de minimis effect on the consideration of an EGU whether to retire or not.

In the second step of the procedure for determining allocations to existing units, the EPA would compile a database containing for each eligible unit the unit's historical heat input and total NO_x emissions data for the five most recent ozone seasons. For each unit, the EPA would compute an average heat input value based on the three highest non-zero heat input values over the 5-year period, or as the average of all the non-zero values in the period if there are fewer than three non-zero values. For each unit, the EPA would also determine the maximum total NO_x emissions value over the 5-year period. These procedures are nearly identical to the procedures used in the Revised CSAPR Update, with two exceptions. First, instead of using only the data available at the time of the rulemaking, for each control period the EPA would use data from the most recent five control periods for which data had been reported. (For example, for the 2025

control period, the EPA would use data for the 2019–2023 control periods.) Second, to simplify the data compilation process, the EPA would use only a five-year period for NO_x mass emissions, in contrast to the 8-year period used in the Revised CSAPR Update for NO_x mass emissions.

In the third step of the procedure for determining allocations to existing units in each state, the EPA would allocate the available allowances for that state among the state's eligible units in proportion to the share each unit's average heat input value represents of the total of the average heat input values for all the state's eligible units, but not more than the unit's maximum total NO_x value. If the allocations to one or more units are curtailed because of the units' maximum total NO_x values, the EPA would iterate the calculation procedure as needed to allocate the remaining allowances, excluding from each successive iteration any units whose allocations have already reached their maximum total NO_x values. This calculation procedure is identical to the calculation procedure used in the Revised CSAPR Update (as well as the CSAPR Update and CSAPR).

The unit-level allocations for the 2023 and the 2024 control periods would be determined in the rulemaking based on the emissions budgets for those control periods also determined in the rulemaking and would be recorded 30 days after the effective date of the final rule (in order to provide time to execute the proposed recall of 2023 and 2024 Group 2 allowances, as discussed in Section VII.B.11.c of this proposed rule). This proposed recordation schedule represents a revision to the recordation schedule currently in the Group 3 trading program regulations which calls for allocations of 2023 and 2024 Group 3 allowances to existing units to be recorded on July 1, 2022. The EPA notes that for the three states with approved SIP revisions establishing their own methodologies for allocating Group 2 allowances—Alabama, Indiana, and New York—EPA proposes to follow those methodologies to the extent possible in developing the allocations of Group 3 allowances for the 2023 and 2024 control periods. For the amounts of the proposed allocations to existing units for the 2023 and 2024 control periods, see the "Unit-Level Allowance Allocations Proposed Rule TSD" in the docket.

The unit-level allocations for each control period in 2025 or a later year would be computed immediately following the determination of the emissions budgets for the control period. The EPA would perform the

computations and issue a notice of data availability concerning the preliminary unit-level allocations for each control period by March 1 of the year before the control period. Objections to the data and preliminary computations could be submitted for 30 days, and the EPA would make any appropriate revisions and issue another notice of data availability by May 1 of the year before the control period. The EPA would then record the allocations by July 1 of the year before the control period. This proposed recordation schedule—which is necessitated by the fact that the amounts of the unit-level allocations to be recorded would not be known until the year before the control period, as just discussed—represents a revision to the recordation schedule currently in the Group 3 trading program regulations which calls for allocations of Group 3 allowances to existing units for control periods in 2025 and later years to be recorded on July 1 of the third year before the year of the control period. The EPA does not propose to follow any state-specific methodologies as part of the procedures for determining default unit-level allocations of Group 3 allowances for control periods in 2025 or later years, but any state wishing to use a procedure different than EPA's default allocations procedure could do so by obtaining approval of a SIP revision, as discussed in Section VII.D of this proposed rule.

In the case of any states making state-determined allocations under approved SIP revisions, the allocations would have to be submitted to EPA by June 1 of the year before the control period and the EPA would record the allocations by July 1 of the year before the control period. The proposed submission deadline would represent a revision of the current deadline of June 1 of the year 3 years before the control period, and the proposed recordation deadline would represent a revision of the current deadline of July 1 of the year 3 years before the control period. The purpose of revising the submission deadline is to provide each state for which the EPA has approved a SIP revision authorizing state-determined allowance allocations a period of time in which to apply the state's preferred allocation methodology to the state's trading budget for the appropriate control period. Because the state trading budgets under the Group 3 trading program as revised would not be known until May 1 of the year before each control period, states could not determine unit-level allocations of the budgets using their own methodologies significantly before June 1 of the year

before the control period. Submission by June 1 would allow the allowance allocations to the units in the state to be recorded by July 1 of the year before the control period, simultaneously with the recordation of allocations to units in states where the EPA determines the allocations.

As an exception to all of the recordation deadlines that would otherwise apply, the EPA proposes to not record any allocations of Group 3 allowances in a source's compliance account unless that source has complied with the requirements to surrender previously allocated 2023–2024 Group 2 allowances. The surrender requirements are necessary to maintain the previously established levels of stringency of the Group 2 trading program for the states and sources that remain subject to that program under this final rule. The EPA finds that it is reasonable to condition the recordation of Group 3 allowances on compliance with the surrender requirements because the condition will spur compliance and will not impose an inappropriate burden on sources. The EPA considers establishment of this condition, which will facilitate the continued functioning of the Group 2 trading program, to be an appropriate exercise of the Agency's authority under CAA section 301 (42 U.S.C. 7601) to prescribe such regulations as are necessary to carry out its functions under the Act.

The EPA requests comment on the proposed revisions to the procedures for allocating allowances to existing units under the Group 3 trading program, the deadlines for recording the allocations, and the deadlines for submission of state-determined allowance allocations to the EPA.

c. Allocations From Portions of State Emissions Budgets Set Aside for New Units

As promulgated in the Revised CSAPR Update, the Group 3 trading program regulations provide for the EPA to allocate allowances from each new unit set-aside and Indian country new unit set-aside after the end of the control period at issue. The regulations call for the EPA to allocate allowances to any eligible "new" units in the state in proportion to their respective emissions during the control period, up to the amounts of those emissions if the relevant set-aside contains sufficient allowances, and not exceeding those emissions. An eligible new unit for purposes of allocations from a set-aside for a given control period is generally any unit in the relevant area that reported emissions subject to allowance surrender requirements during the

control period and that was not eligible to receive an allowance allocation as an "existing" unit for the control period. Any allowances remaining in an Indian country new unit set-aside after the allocations to new units are transferred to the new unit set-aside for the state for potential allocation to new units in non-Indian country areas of the state, and any allowances remaining in a new unit set-aside after the allocations to new units are reallocated to the existing units in the state in proportion to those units' previous allocations for the control period as existing units. The EPA issues a notice of data availability concerning the proposed allocations by March 1 following the control period, provides an opportunity for submission of objections, and issues a final notice of data availability and record the allocations by May 1 following the control period, one month before the June 1 compliance deadline.

In this rulemaking, as discussed in Section VII.B.9.a of this document, the EPA is proposing to eliminate Indian country new unit set-asides after the 2022 control period and to expand eligibility for allocations from each state's new unit set-aside for a control period in 2023 or a later year to include units in Indian country within the state's borders, regardless of whether the area of Indian country is covered by the state's CAA implementation planning authority. The reasons for these proposed revisions are discussed in Section VII.B.9.a of this proposed rule. The EPA is not proposing any substantive revisions to the current Group 3 trading program provisions governing the procedures for allocating allowances from a state's new unit set-aside for a control period to the eligible units within the state's borders.²⁸⁸

This EPA notes that the proposed revisions to other provisions of the Group 3 trading program regulations discussed elsewhere in this document will reduce the portions of the state emissions budgets that are allocated through the new unit set-asides. Specifically, because the new unit set-asides will no longer receive any additional allowances when units retire, for control periods in 2025 and later years the amounts of allowances in the new unit set-asides will always be 2 percent of the respective state emissions budgets for the respective control periods. This reduction in the size of the

²⁸⁸ As discussed in Section X of this proposed rule, the EPA is proposing to relocate some of the regulatory provisions relating to administration of the new unit set-asides and is also proposing to remove certain provisions that would be made obsolete by proposed revisions to other provisions of the Group 3 trading program regulations.

new unit set-asides is appropriate given that the number of consecutive control periods for which any particular unit is likely to receive allocations from a state's new unit set-aside will be reduced to two or three before the unit becomes eligible to receive allocations from the unreserved portion of the state's emissions budget. This approach contrasts with the approach under the other CSAPR trading programs where a new unit never becomes eligible to receive allocations from the unreserved portion of the emissions budget and where the new unit set-aside therefore needs to grow to accommodate an ever-increasing share of the state's total emissions.

The EPA also notes that, as discussed in Sections VII.D.2 and VII.D.3 of this proposed rule, in the event that a state chooses to replace EPA's default allowance allocations under the Group 3 trading program with state-determined allocations through a SIP revision, the EPA will continue to administer the portion of each state emissions budget reserved in a new unit set-aside in order to ensure the availability of allowance allocations to new units in any areas of Indian country within the state not covered by the state's CAA implementation planning authority.

d. Incorrectly Allocated Allowances

The Group 3 trading program regulations as promulgated in the Revised CSAPR Update include provisions addressing incorrectly allocated allowances. With regard to any allowances that were incorrectly allocated and are subsequently recovered, the current provisions generally call for the recovered allowances to be reallocated to other units in the relevant state (or Indian country within the borders of the state) through the process for allocating allowances from the new unit set-aside (or Indian country new unit set-aside) for the state. If the procedures for allocating allowances from the set-asides have already been carried out for the control period for which the recovered allowances were issued, the allowances would be allocated through the set-asides for subsequent control periods.

The EPA continues to view the current provisions for disposition of recovered allowances as reasonable in the case of any allowances that are recovered before the deadline for recording allocations of allowances from the new unit set-aside for the control period for which the recovered allowances were issued. However, in the case of any allowances that are recovered after that deadline, adding the

recovered allowances to the new unit set-aside for a subsequent control period, as provided in the current regulations, would be inconsistent with the proposed trading program enhancements discussed elsewhere in this document, where the amounts of allowances provided in the state emissions budgets for each control period are designed to reflect the most current available information on fleet composition and utilization and where the quantities of banked allowances available for use in each control period are recalibrated for consistency with the state emissions budgets. The EPA therefore proposes that, starting with allowances allocated for the 2024 control period, any incorrectly allocated allowances that are recovered after the deadline for allocating allowances from the new unit set-aside for that control period (*i.e.*, May 1 of the year following the control period) would be transferred to a surrender account instead of being reallocated to other units in the state.

The EPA requests comment on the proposed revision to the provisions for disposition of incorrectly allocated allowances that are recovered after the deadline for allocating allowances from the new unit set-asides for the control periods for which the recovered allowances were issued.

10. Other Trading Program Provisions

This section discusses how certain existing provisions of the Group 3 trading program regulations would apply to sources that become subject to the program as a result of a final rule in this rulemaking as well as certain proposed changes to reporting requirements associated with the proposed backstop daily NO_x emissions rates for coal-fired units.

a. Designated Representative Requirements

As noted in Section VII.B.1.a of this document, a core design element of all the CSAPR trading programs is the requirement that each source must have a designated representative who is authorized to represent all of the source's owners and operators and is responsible for certifying the accuracy of the source's reports to the EPA and overseeing the source's Allowance Management System account. The necessary authorization of a designated representative is certified to the EPA in a certificate of representation. The EPA is not proposing any change to the Group 3 trading program's designated representative provisions in this rulemaking.

The existing designated representative provisions in the Group 3 trading

program regulations already provide that EPA will interpret references to the Group 2 trading program in certain documents—including a certificate of representation as well as a notice of delegation to an agent or an application for a general account—as if the documents referenced the Group 3 trading program instead of the Group 2 trading program. For these reasons, sources that currently participate in the Group 2 trading program and that transition to the Group 3 trading program because of a final rule in this rulemaking will not need to submit any new forms as part of the transition, because previously submitted forms will be valid for purposes of the Group 3 trading program.

Designated representatives for sources that are newly affected under the Group 3 trading program and that are not currently affected under the Group 2 trading program would need to submit new or updated certificates of representation. If the source is also affected under other CSAPR trading programs or the Acid Rain Program, the source's designated representative for all of the programs must be the same individual. The EPA will not record any Group 3 allowances allocated to a source in the source's compliance account until the source has a properly authorized designated representative.

b. Monitoring and Reporting Requirements

The Group 3 trading program requires monitoring and reporting of emissions and heat input data in accordance with the provisions of 40 CFR part 75. In this rulemaking, the EPA is not proposing any change to these provisions of the Group 3 trading program except with respect to the monitor certification deadline for certain units. The EPA is also not proposing any changes to the monitoring requirements in 40 CFR part 75 for units subject to such requirements. However, because of the proposed geographic expansion of the Group 3 trading program, certain units that were not previously subject to monitoring requirements under 40 CFR part 75 would become subject to such requirements. Also, the EPA is proposing certain additional recordkeeping and reporting requirements that would be met using some of the data that are already collected by the required monitoring systems.²⁸⁹

²⁸⁹ The EPA is not proposing to amend the existing provisions of the Group 3 trading program regulations that govern whether units covered by the program must record and report required data on a year-round basis or may elect to record and

Under 40 CFR part 75, a unit has several options for monitoring and reporting, including the use of continuous emissions monitoring systems (CEMS), excepted monitoring methodologies for qualifying gas- or oil-fired units that rely in part on fuel-flow metering in combination with CEMS-based or testing-based NO_x emissions rate data, low-mass emissions monitoring for certain non-coal-fired, low emitting units, and alternative monitoring systems approved by the Administrator through a petition process. In addition, sources can submit petitions to the Administrator for alternatives to individual monitoring, recordkeeping, and reporting requirements specified in 40 CFR part 75. Each CEMS must undergo rigorous initial certification testing and periodic quality assurance testing thereafter, including the use of relative accuracy test audits and 24-hour calibrations. In addition, when a monitoring system is not operating properly, standard substitute data procedures are applied to produce a conservative estimate of emissions for the period involved. Further, 40 CFR part 75 requires electronic submission of quarterly emissions reports to the Administrator, in a format prescribed by the Administrator. The reports would contain all of the data required concerning ozone season NO_x emissions.

For units exhausting to common stacks, 40 CFR part 75 includes options that often allow monitoring to be conducted at the common stack on a combined basis for all the units as an alternative to installing separate monitoring systems for the individual units in the ductwork leading to the common stack. The units then keep records and report hourly and cumulative NO_x mass emissions and in many cases heat input data on a combined basis for all units exhausting to the common stack. With respect to heat input data, but not NO_x mass emissions data, most such units are also required to record and report hourly and cumulative data on an individual-unit basis, and where necessary they typically compute the necessary unit-level hourly heat input values by apportioning the combined hourly heat

report required data on an ozone season-only basis. See 40 CFR 97.1034(d)(1); see also 40 CFR 75.74(a)-(b). Thus, for units that are required or elect to report other data on a year-round basis, the proposed additional recordkeeping and reporting requirements would also apply year-round, while for units that are allowed and elect to report other data on an ozone season-only basis, the proposed additional requirements would also apply for the ozone season only.

input values for the common stack in proportion to the individual units' recorded hourly output of electricity or steam. See generally 40 CFR 75.72.

In this rulemaking, the proposed provisions governing default unit-level allowance allocations, backstop daily NO_x emissions rates for certain coal-fired units, and secondary emissions limitations for units contributing to assurance level exceedances would all require the use of unit-level reported data on NO_x mass emissions (or unit-level NO_x emissions rates computed in part based on unit-level reported data on NO_x mass emissions). To facilitate the implementation of these proposed provisions, the EPA is proposing to require all units covered by the Group 3 trading program exhausting to common stacks to record and report unit-level hourly and cumulative NO_x mass emissions data starting with the 2024 control period. To obtain the necessary unit-level hourly mass emissions values, the EPA proposes to allow the units to apportion hourly mass emissions values determined at the common stack in proportion to the individual units' recorded hourly heat input. The proposed apportionment procedure would be very similar to the apportionment procedure that most such units already apply to compute reported unit-level heat input data. Because the additional required data values would be obtained through apportionment, implementation of the proposed additional recordkeeping and reporting requirements would necessitate a one-time update to the units' data acquisition and handling systems but would not require any changes to the monitoring systems already needed to meet other requirements under 40 CFR part 75. In most cases, the EPA expects that the reported values computed through these apportionment procedures would reasonably approximate the values that could be obtained through installation and operation of separate monitoring systems for the individual units, because the units exhausting to the common stack would be expected to have similar NO_x emissions rates. However, the EPA also recognizes that at some plants, unit-level values determined through apportionment based on electricity or steam output could overstate the reported NO_x mass emissions for some units and correspondingly understate the reported NO_x mass emissions for other units. While the EPA has not at this time identified any reason to expect such potential overstatement and understatement to cause the proposed

requirements in this rule to be less stringent overall, the Agency requests comment on whether units in particular situations should be required to obtain the necessary hourly mass emissions values through installation and operation of monitoring systems at the individual-unit level.²⁹⁰

In addition, to implement the proposed backstop daily NO_x emissions rates during the ozone season for certain coal-fired units, the EPA is proposing to require additional recordkeeping and reporting requirements for these units. Specifically, starting in 2024 for coal-fired units with existing SCR controls serving generators larger than 100 MW, and starting in 2027 for other coal-fired units serving generators larger than 100 MW (except circulating fluidized bed units), the units would be required to record and report total daily NO_x emissions and total daily heat input, daily average NO_x emissions rate, and daily NO_x emissions exceeding the applicable backstop daily NO_x emissions rates. The units would also be required to record and report cumulative NO_x emissions exceeding the backstop daily NO_x emissions rates for the ozone season. These data would be used to determine the allowance surrender requirements related to the backstop daily NO_x emissions rates. As with the additional recordkeeping and reporting requirements discussed above for units exhausting to common stacks, implementation of the additional recordkeeping and reporting requirements for coal-fired units would necessitate a one-time update to the units' data acquisition and handling systems but would not require any changes to the monitoring systems already needed to meet other requirements under 40 CFR part 75.

In states whose sources currently participate in the Group 3 trading program, as well as states whose sources participate in the Group 2 trading program and would transition to the

²⁹⁰ For example, as noted in Section VII.B.7 of this proposed rule, there are currently five plants in the states covered by this proposal where SCR-equipped coal-fired units and non-SCR-equipped coal-fired units exhaust to common stacks. If the owners and operators of these plants choose to report apportioned NO_x mass emissions data in preference to installing and operating separate monitoring systems, the likely effect would be to overstate reported NO_x mass emissions for the SCR-equipped units and correspondingly understate reported NO_x mass emissions for the non-SCR equipped units. This would make compliance with the proposed backstop daily NO_x emissions rate more challenging for the SCR-equipped units. If the EPA does not require the owners and operators to install and operate separate monitoring systems for the individual units in a final rule in this rulemaking, the owners and operators would still have the option to do so if they believed it would be to their benefit.

Group 3 trading program under this proposal, units that are not subject to the proposed backstop daily NO_x emissions rates would not need to make any changes to their current monitoring and reporting as a result of the transition. The sources in states currently in the Group 2 trading program would be required to begin monitoring and reporting of NO_x emissions and operational data for purposes of the Group 3 trading program as of May 1, 2023, the start of the 2023 control period.

In states whose sources do not currently participate in the Group 2 trading program, any sources that currently report ozone season NO_x mass emissions according to 40 CFR part 75 to comply with SIP requirements and that are not subject to the proposed backstop daily NO_x emissions rates similarly would not need to make any changes to their current monitoring and reporting as a result of the transition. Other sources in these states that currently report SO₂ and NO_x emissions data according to 40 CFR part 75 under other CSAPR trading programs or the Acid Rain Program would not need to certify new monitoring systems for purposes of the Group 3 trading program but would need to update their monitoring plans and possibly update the software in their data acquisition and handling systems to compute certain additional values from the measurements that are already being recorded. All the sources in these states that already have monitoring systems certified under 40 CFR part 75 would be required to begin monitoring and reporting of NO_x emissions and operational data for purposes of the Group 3 trading program as of the later of May 1, 2023, or the effective date of the final rule.²⁹¹

Finally, any sources that meet the applicability criteria of the Group 3 trading program and that do not

currently report NO_x emissions data to the EPA under 40 CFR part 75 would need to certify new monitoring systems in accordance with part 75 before they would be required to monitor and report emissions for purposes of the Group 3 trading program. The units the EPA has been able to identify as potentially affected under this proposal that may need to certify new monitoring systems are listed in Table VII.B.3–1 (along with some other units that are potentially affected under this proposal and that already have certified monitoring systems). Because each of the listed units commenced commercial operation more than 180 days before the date when a final rule in this rulemaking would become effective, under the current Group 3 trading program regulations (*i.e.*, without the revisions proposed in this section), each unit's monitor certification deadline would generally be the effective date of the final rule. To ensure that the final rule does not impose monitor installation and certification requirements on these units before the effective date of the final rule, the EPA is proposing to revise the Group 3 trading program's monitor certification deadline provisions to establish a 180-day window for certification of the new monitoring systems after the effective date of a final rule in this rulemaking for units that do not already have monitoring systems certified under 40 CFR part 75, similar to the 180-day window already provided to units commencing commercial operation after (or less than 180 days before) the final rule's effective date. The 180th day for units in this situation would likely fall after the end of the 2023 ozone season, with the result that the certification deadline would be extended until May 1, 2024, the first day of the 2024 ozone season. Because the program's allowance holding requirements apply to a given unit only after that unit's monitor certification deadline, the units in this situation consequently would become subject to allowance holding requirements as of the 2024 ozone season rather than the 2023 ozone season.²⁹²

²⁹² Table VII.B.3–1 of this proposed rule lists 22 existing units in Delaware, Nevada, Utah, and Wyoming that appear to meet the Group 3 trading program's general applicability criteria and that do not already report NO_x emissions data to the EPA under 40 CFR part 75 pursuant to any other existing regulatory requirements. As noted in Section VII.B.3 of this proposed rule, six of the 22 listed units have reported that they may retire before the 2023 ozone season, and the possibility exists that up to nine of the remaining listed units could qualify for an exemption from the Group 3 trading program available to certain cogeneration units. EPA therefore projects that the revision to the

The EPA requests comment on the proposed revisions to the recordkeeping and reporting provisions in 40 CFR part 75 and the proposed establishment of a 180-day window for certification of new monitoring systems after the effective date of a final rule in this rulemaking for units that do not already have monitoring systems certified under 40 CFR part 75. As discussed above, with respect to units exhausting to common stacks, the EPA also requests comment on whether units in particular situations should be required to obtain hourly NO_x mass emissions values through installation and operation of monitoring systems at the individual-unit level instead of being allowed to obtain values for individual units through apportionment of the combined values for the units exhausting to the common stack.

11. Transitional Provisions

This section discusses several provisions that the EPA proposes to implement in order to address the transition of sources into the Group 3 trading program as revised. The purposes of the proposed transitional provisions are generally the same as the purposes of the analogous transitional provisions promulgated in the Revised CSAPR Update: First, accounting for the possibility that the effective date of a final rule in this rulemaking will fall after the starting date of the first affected ozone season (which in this case is, May 1, 2023); second, establishing an appropriately-sized initial allowance bank through the conversion of previously banked allowances; and third, preserving the intended stringency of the Group 2 trading program for the sources that will continue to be subject to that program.²⁹³ However, the sources that would be participants in the revised Group 3 trading program under this proposal are transitioning from several different starting points—with some sources already in the Group 3 trading

monitor certification deadline proposed in this section, and the related delay in allowance holding requirements from 2023 to 2024, could apply to between seven and 22 units, with the total estimated 2021 ozone season NO_x emissions for all such units ranging between 250 and 450 tons. During the period before allowance holding requirements apply to the units—*i.e.*, the period from the effective date of a final rule in this rulemaking until the start of the 2024 control period—other requirements of the program would still apply, such as the requirement for submission of a certificate of representation by a designated representative and the requirements related to installation and certification of required monitoring systems.

²⁹³ The EPA is not proposing to create a “safety valve mechanism” in this rulemaking analogous to the safety valve mechanism established under the Revised CSAPR Update.

²⁹¹ For units that currently report under 40 CFR part 75 only for annual programs and that use the optional low mass emissions methodology in 40 CFR 75.19, an additional consideration could arise. Specifically, eligibility to use the low mass emissions methodology for reporting ozone season NO_x mass emissions is restricted to units demonstrating that they have not exceeded or will not exceed a maximum of 50 tons of NO_x per ozone season. In theory, some units that would be eligible to use the low mass emissions methodology for purposes of annual programs only might lose that eligibility because of the 50-ton ozone season cap (which does not apply to units reporting for annual programs only). Based on the emissions reports submitted for the 2018–2020 control periods under the Acid Rain Program and the CSAPR annual programs, none of the existing units that currently report under 40 CFR part 75 for annual programs only and that would be added to the Group 3 trading program under the proposal are presently in this theoretical situation.

program under its current regulations, some sources coming from the Group 2 trading program, and some sources not currently participating in any seasonal NO_x trading program. EPA is therefore proposing transitional provisions that differ across the sets of potentially affected sources based on the sources' different starting points.

a. Prorating Emissions Budgets, Assurance Levels, and Unit-Level Allowance Allocations in the Event of an Effective Date After May 1, 2023

While it is EPA's intent for a final rule in this rulemaking to take effect before the start of the Group 3 trading program's 2023 control period on May 1, 2023, it is possible that the final rule's effective date will fall after that date. The EPA proposes to address this contingency by determining the amounts of emissions budgets and unit-level allowance allocations on a full-season basis in the rulemaking and by also including provisions in the revised regulations to prorate the full-season amounts as needed to ensure that no sources become subject to new or more stringent regulatory requirements before the final rule's effective date.²⁹⁴ Variability limits and assurance levels for 2023 would be computed using the appropriately prorated emissions budgets amounts, and unit-level allocations would also be prorated.²⁹⁵

As discussed in Section VII.B.2 of this proposed rule, in the case of states (and Indian country within the states' borders) whose sources do not currently participate in either the Group 2 trading program or the Group 3 trading program—Delaware, Minnesota, Nevada, Utah, and Wyoming—the sources would begin participating in the Group 3 trading program on the later of May 1, 2023, or the final rule's effective date. For these states, in the rulemaking the EPA would compute the full-season emissions budgets that would apply for the entire 2023 control period if the final rule becomes effective no later than May 1, 2023, and is therefore in effect for the entire 153-day control period from May 1, 2023, through September 30, 2023. If the final rule becomes effective after May 1, 2023, the EPA would determine prorated emissions budgets by multiplying each

full-season emissions budget by the number of days from the rule's effective date through September 30, 2023, dividing by 153 days, and rounding to the nearest allowance. The prorated variability limits would be computed as 21 percent of the prorated emissions budgets, rounded to the nearest allowance, yielding prorated assurance levels that equal 121 percent of the prorated emissions budgets. To determine unit-level allocation amounts from the prorated emissions budgets, the EPA would determine full-season allocation amounts in the rulemaking and would determine preliminary prorated allocation amounts in the same manner as described for the emissions budgets previously. The preliminary prorated amounts of the largest unit-level allowance allocations for each state would then each be adjusted up or down by one allowance as needed to cause the sum of the final prorated unit-level allowance allocations for the state to equal the state's prorated emissions budget. All calculations required to determine the prorated emissions budgets and variability limits and the unit-level allocations for the 2023 control period would be carried out as soon as possible after the EPA learns the effective date of a final rule in this rulemaking (which is expected to be approximately 60 days after the date of the final rule's publication in the **Federal Register**). The unit-level allocations for both the 2023 and 2024 control periods would be recorded in facilities' compliance accounts approximately 30 days after the final rule's effective date, as discussed in Section VII.B.9.b of this proposed rule.

In the case of states (and Indian country within the states' borders) whose sources currently participate in the Group 3 trading program—Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia—the sources would continue to participate in the Group 3 trading program for the 2023 control period, subject to prorating procedures designed to ensure that the changes in 2023 emissions budgets and assurance levels would not substantively affect the sources' requirements prior to the rule's effective date. For these states, in the rulemaking the EPA would compute the full-season emissions budgets that would apply for the entire 2023 control period if the final rule becomes effective no later than May 1, 2023, but the EPA would not remove from the regulations the full-season emissions budgets for the 2023 control period that were established in the Revised CSAPR

Update rulemaking. Instead, the EPA would include both sets of emissions budgets and variability limits in the regulations, along with a provision indicating that the emissions budgets promulgated in the Revised CSAPR Update would apply on a prorated basis for the portion of the 2023 control period before the final rule's effective date and the emissions budgets established in this rulemaking would apply on a prorated basis for the portion of the 2023 control period on and after the final rule's effective date. Under this provision, the EPA would determine a blended emissions budget for each state for the 2023 control period, computed as the sum of the appropriately prorated amounts of the state's current and revised emissions budgets. (For example, if the final rule became effective on the eleventh day of the 153-day 2023 control period, the blended emissions budget would equal the sum of 10/153 times the current emissions budget plus 143/153 times the revised emissions budget, rounded to the nearest allowance.) Blended variability limits for the 2023 control period would be computed as 21% of the blended emissions budgets, yielding blended assurance levels equal to 121 percent of the blended emissions budgets. Unit-level allocations would be determined by applying the allocation procedure described in Section VII.B.9 of this proposed rule to the blended budgets. In the case of states (and Indian country within the states' borders) whose sources currently participate in the Group 2 trading program—Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin—the sources would begin to participate in the Group 3 trading program as of May 1, 2023, regardless of the final rule's effective date, as discussed in Section VII.B.2 of this proposed rule, subject to prorating procedures designed to ensure that the transition from the Group 2 trading program to the Group 3 trading program would not substantively affect the sources' requirements prior to the rule's effective date. The prorating procedures for these states would mirror the procedures for the states currently in the Group 3 trading program, except that because no emissions budgets currently appear in the Group 3 trading program regulations for the states that are currently covered by the Group 2 trading program, the EPA would add two sets of emissions budgets for these states to the Group 3 trading program regulations: First, the states' emissions budgets for the 2023 control period that currently appear in the Group 2 trading

²⁹⁴ As discussed in Sections VII.B.7 and VII.B.8 of this proposed rule, the proposed revisions establishing unit-specific backstop daily emissions rates and, for units contributing to assurance level exceedances, secondary unit-specific emissions limitations, would not take effect until the 2024 control period or later.

²⁹⁵ The EPA notes that transitional provisions similar to the prorating provisions proposed in this section were finalized and implemented under the Revised CSAPR Update.

program regulations, which would be included in the revised Group 3 trading program regulations to represent the states' emissions budgets for the portion of the 2023 control period before the final rule's effective date, and second, the emissions budgets for the 2023 control period established for the states in this rulemaking, which would be included in the revised Group 3 trading program regulations to represent the state's emissions budgets for the portion of the 2023 control period on and after the final rule's effective date. The procedures for determining blended emissions budgets, variability limits and assurance levels, and unit-level allowance allocations would be the same as for the states currently in the Group 3 trading program. Again, all calculations required to determine the prorated emissions budgets and variability limits and the unit-level allocations for the 2023 control period would be carried out as soon as possible after the EPA learns the effective date of a final rule in this rulemaking (which is expected to be approximately 60 days after the date of the final rule's publication in the **Federal Register**). The unit-level allocations for both the 2023 and 2024 control periods would be recorded in facilities' compliance accounts approximately 30 days after the final rule's effective date, as discussed in Section VII.B.9.b of this proposed rule.

The reason for proposing that sources currently in the Group 2 trading program would begin to participate in the Group 3 trading program on May 1, 2023 even if the final rule's effective date is after May 1, 2023, is that it would serve the public interest and greatly aid in administrative efficiency for most elements of the Group 3 trading program—specifically, all elements of the trading program other than the elements designed to establish more stringent emissions limitations for the sources coming from the Group 2 trading program—to apply to the sources starting on May 1, 2023. This would facilitate implementation of the Group 3 trading program in an orderly manner for the entire 2023 ozone season and reduce compliance burdens and potential confusion. Each of the CSAPR trading programs for ozone season NO_x is designed to be implemented over an entire ozone season. Implementing the transition from the Group 2 trading program to the Group 3 trading program in a manner that required the covered sources to participate in the Group 2 trading program for part of the 2023 ozone season and the Group 3 trading program for the remainder of that ozone

season would be complex and burdensome for sources. Attempting to address the issue by splitting the Group 2 and Group 3 requirements for these sources into separate years is not a viable approach, because EPA has no legal basis for releasing the transitioning Group 2 sources from the emissions reduction requirements found to be necessary in the CSAPR Update for a portion of the 2023 ozone season, and EPA similarly has no legal basis for deferring implementation of the 2023 emissions reduction requirements found to be necessary under this rule for the transitioning Group 2 sources until 2024. Moreover, the requirements of the current Group 2 trading program and the revised Group 3 trading program for the 2023 control period are substantively identical as to almost all provisions, such that with respect to those provisions, a source will not need to alter its operations in any manner or face different compliance obligations as a consequence of a transition from the Group 2 trading program to the Group 3 trading program. Thus, the EPA believes that no substantive concerns regarding retroactivity arise from transitioning the sources currently in the Group 2 trading program to the Group 3 trading program starting on May 1, 2023, as long as those aspects of the revised Group 3 trading program for the 2023 control period that *do* meaningfully differ from the analogous aspects of the Group 2 trading program—that is, the relative stringencies of the two trading programs, as reflected in the emissions budgets and associated assurance levels—are applied only as of the effective date of the final rule.

In all respects other than prorating the emissions budgets, variability limits and assurance levels, and unit-level allowance allocations, with respect to the sources currently participating in the Group 2 trading program or the Group 3 trading program, the EPA proposes to implement the revised Group 3 trading program for the 2023 control period in a uniform manner for the entire control period. Thus, emissions would be monitored and reported for the entire 2023 ozone season (*i.e.*, May 1, 2023, through September 30, 2023), and as of the allowance transfer deadline for the 2023 control period (*i.e.*, June 1, 2024) each source would be required to hold in its compliance account vintage-year 2023 Group 3 allowances not less than the source's emissions of NO_x during the entire 2023 ozone season. Any efforts undertaken by one of these sources to reduce its emissions during the portion

of the 2023 ozone season before the effective date of the rule would aid the source's compliance by reducing the amount of Group 3 allowances that the source would need to hold in its compliance account as of the allowance transfer deadline, increasing the range of options available to the source for meeting its compliance obligations under the revised Group 3 trading program. In the case of the sources that do not currently participate in the Group 2 trading program or the Group 3 trading program, the EPA similarly proposes to implement the revised Group 3 trading program for the 2023 control period in a uniform manner for the entire control period, except that the 2023 control period for these sources may be shorter than the normal 153-day length.

The EPA requests comment on this approach for implementing the Group 3 trading program in a manner that would apply the substantive increases in stringency of the emissions budgets and assurance levels established under the final rule on and after, but not before, the final rule's effective date.

b. Creation of Additional Group 3 Allowance Bank for 2023 Control Period

In the CSAPR Update, where the EPA established the Group 2 trading program and transitioned over 95% of the sources that had been participating in what is now the CSAPR NO_x Ozone Season Group 1 Trading Program (the "Group 1 trading program") to the new program, the EPA determined that it was reasonable to establish an initial bank of allowances for the Group 2 trading program by converting almost all allowances banked under the Group 1 trading program at a conversion ratio determined by a formula. In the Revised CSAPR Update, where EPA established the Group 3 trading program and transitioned approximately 55% of the sources that had been participating in the Group 2 trading program to the new program, the EPA similarly determined that it was reasonable to establish an initial bank of allowances for the Group 3 trading program by converting allowances banked under the Group 2 trading program at a conversion ratio determined by a formula, using a conversion procedure that was modified to leave much of the Group 2 allowance bank available for use by the approximately 45% of sources then in the Group 2 trading program that would remain in that program. Any conversion of banked allowances from a previous trading program for use in a new trading program must ensure that implementation of the new trading program will result in NO_x emissions

reductions sufficient to address significant contribution by all states that would be participating in the new trading program, while also providing industry certainty (and obtaining an environmental benefit) through continued recognition of the value of saving allowances through early reductions in emissions. EPA's approach to balancing these concerns in the CSAPR Update through the conversion of banked allowances from the Group 1 trading program to the Group 2 trading program was upheld in *Wisconsin v. EPA*, see 938 F.3d at 321.

In the current rulemaking, applying the same balancing principle as in the CSAPR Update and the Revised CSAPR Update, the EPA proposes to carry out a further conversion of allowances banked for control periods before 2023 under the Group 2 trading program into allowances usable in the Group 3 trading program in control periods in 2023 and later years. Because the EPA is proposing to transition over 90% of the remaining sources in the Group 2 trading program to the Group 3 trading program—much closer to the situation in the CSAPR Update than the situation in the Revised CSAPR Update—in this rulemaking EPA proposes to apply a conversion procedure similar to the procedure followed in the CSAPR Update. Under the proposed conversion procedure, in the final rule in this rulemaking the EPA would not set a predetermined conversion ratio but instead would set provisions defining the types of accounts whose holdings of Group 2 allowances would be converted to Group 3 allowances and establishing the target amount of new Group 3 allowances that would be created. The proposed conversion date would be August 1, 2023, which is 2 months after the compliance deadline for the 2022 control period under the Group 2 trading program and ten months before the compliance deadline for the 2023 control period under the Group 3 trading program. The actual conversion ratio would be determined as of the conversion date and would be the ratio of the total amount of Group 2 allowances held in the identified types of accounts prior to the conversion to the total amount of Group 3 allowances being created. Consistent with the approach taken in the CSAPR Update, the EPA proposes to define the types of accounts included in the conversion to include all accounts except the facility accounts of sources in states that would remain in the Group 2 trading program.²⁹⁶ Thus, the accounts whose

²⁹⁶ If the proposed expansion of geographic scope for the Group 3 trading program is unchanged in the

holdings of Group 2 allowances would be converted to Group 3 allowances would include (1) the facility accounts of all sources in the states transitioning from the Group 2 trading program to the Group 3 trading program, (2) the facility accounts of all sources in the states already participating in the Group 3 trading program, (3) the facility accounts of all sources in any other states not covered by the Group 2 trading program that happen to hold Group 2 allowances as of the conversion date, and (4) all general accounts (that is, accounts that are not facility accounts, including other accounts controlled by source owners as well as accounts controlled by non-source entities such as allowance brokers). Creating the new Group 3 allowances through conversion of previously banked Group 2 allowances would also help preserve the stringency of the Group 2 trading program for the states that remain covered by that trading program at levels consistent with the stringency found to be appropriate to address those states' good neighbor obligations with respect to the 2008 ozone NAAQS in the CSAPR Update.

With respect to setting the target amount of Group 3 allowances that would be created in the conversion process, the EPA proposes to follow the same approach that was used in the Revised CSAPR Update for creation of the initial Group 3 allowance bank. Specifically, the target amount of Group 3 allowances to be created would be computed as the sum of the variability limits for the 2024 control period²⁹⁷ established in the final rule for the states being transitioned to the Group 3 trading program from the Group 2 trading program, prorated to reflect the portion of the 2023 control period occurring on and after the effective date of the final rule. Based on the amounts of the proposed state emissions budgets and variability limits, the full-season target amount for the conversion would be 18,517 Group 3 allowances. The quantity of banked Group 2 allowances currently held in accounts other than the facility accounts of sources in Iowa and Kansas exceeding the quantity of allowances likely to be needed for 2021 compliance is approximately 110,000

final rule, the states whose sources would continue to participate in the Group 2 trading program would be Iowa and Kansas.

²⁹⁷ Similar to the approach taken in the Revised CSAPR Update, because emissions reductions from some of the emissions controls that EPA has identified as appropriate to use in setting budgets are first reflected in the 2024 state budgets rather than the 2023 state budgets, the EPA is proposing to base the bank target amount on the sum of the states' 2024 variability limits rather than the 2023 variability limits.

allowances. If the quantities of banked Group 2 allowances did not change between now and the conversion date, and if there was no prorating adjustment, the conversion ratio would be approximately 5.9-to-1, meaning that one Group 3 allowance would be created for every 5.9 Group 2 allowances deducted in the conversion process.²⁹⁸

As noted in Section VII.B.11.a of this proposed rule, it is possible that the effective date of this rule will occur after the start of the 2023 ozone season, and provisions are being proposed to ensure that the increased stringency of this rule's state budgets and state assurance levels (*i.e.*, the sums of the budgets and variability limits) would take effect only after the rule's effective date. Consistent with these other procedures, the EPA is proposing to similarly prorate the bank target amount used in the conversion process. For example, if the effective date of the final rule is the eleventh day of the 153-day 2023 ozone season, the full-season initial bank target amount of 18,517 allowances would be prorated to an initial bank target amount of 17,307 allowances.²⁹⁹ The EPA notes that prorating the bank amount in this manner would not reduce sources' compliance flexibility for the 2023 ozone season, because the amounts of Group 3 allowances that sources would receive for the portion of the 2023 ozone season before the rule's effective date would be based on the current trading program budgets for the 2023 control period before this rulemaking. The current trading program budgets exceed the sources' collective 2021 emissions by approximately 18,600 tons, indicating potentially surplus allowances roughly equal to the full-season bank conversion target amount of 18,517 allowances. Thus, although the prorating procedure would reduce the amount of Group 3 allowances that would be available to sources in the form of an initial bank, the reduction in the quantity of these allowances would be offset by the quantities of Group 3 allowances that would be allocated in excess of sources' recent historical emissions levels for the portion of the ozone season before the final rule's effective date.

As in the CSAPR Update and the Revised CSAPR Update, EPA's overall objective in establishing the target amount for the allowance conversion would be to achieve a total target amount for the bank at a level high enough to accommodate year-to-year

²⁹⁸ By comparison, the analogous conversion ratio under the Revised CSAPR Update was 8-to-1.

²⁹⁹ $18,517 \times (153 - 10) \div 153 = 17,307$.

variability in operations and emissions, as reflected in states' variability limits, but not high enough to allow sources collectively to plan to emit in excess of the collective state budgets. EPA believes that a well-established trading program would be able to function with an allowance bank lower than the full amount of the covered states' variability limits, as discussed in section VII.B.6 with respect to the proposed bank recalibration process that would begin with the 2024 control period. However, EPA also believes there are several compelling reasons in this instance to use a bank target higher than the minimum practicable level.

First, making an allowance bank available for use in the 2023 control period that is somewhat higher than the minimum practicable level would help to address concerns that might otherwise arise regarding the transition to a new set of compliance requirements, for some sources, and the transition to compliance requirements based on revised emissions budgets different from the emissions budgets that the sources had reason to anticipate under previous rulemakings, for the remaining sources. Although the EPA is confident that the emissions budgets being proposed in this rulemaking for the 2023 control period are readily achievable, the EPA also believes that the existence of a somewhat larger allowance bank at this transition point will promote sources' confidence in their ability to meet their 2023 compliance obligations in general and in a liquid allowance market in particular. Second, because the large majority of the remaining Group 2 allowances that would be converted to Group 3 allowances in this rulemaking are held by the sources currently in the Group 2 trading program, while the large majority of the initial bank of Group 3 allowances previously created in the conversion under the Revised CSAPR Update are held by the sources already in the Group 3 trading program, basing the conversion in this rulemaking on a target bank amount set in the same manner as the target bank amount used in the Revised CSAPR Update is expected to result in a less concentrated distribution of holdings of banked Group 3 allowances following the conversion than would be the case if a more stringent target bank amount were used under this rulemaking than was used in the Revised CSAPR Update. A lower concentration of holdings of banked Group 3 allowances would generally be expected to help ensure allowance market liquidity. Third, EPA considers it equitable to treat the

sources in the states transitioning from the Group 2 trading program to the Group 3 trading program in this rulemaking roughly similarly to the sources in the states that transitioned between the same two trading programs in the Revised CSAPR Update with respect to the benefit they would receive under the Group 3 trading program for any efforts they may have made to make emissions reductions under the Group 2 trading program beyond the minimum efforts that were required to comply with the emissions budgets under that program. Finally, to the extent that the proposed conversion results in a larger bank of allowances remaining after the 2023 control period than is considered necessary to sustain a well-functioning trading program in subsequent control periods, the excess would be removed from the program in the proposed bank recalibration process that would be implemented starting with the 2024 control period and therefore would not weaken sources' incentives to control emissions on a permanent basis.

The EPA requests comment on the proposal to create additional banked Group 3 allowances through the conversion of Group 2 allowances banked for control periods before 2023.

c. Recall of Group 2 Allowances Allocated for Control Periods After 2022

To maintain the previously established levels of stringency of the Group 2 trading program for the states and sources that remain subject to that program under this proposed rule, the EPA proposes to recall CSAPR NO_x Ozone Season Group 2 allowances equivalent in amount and usability to all vintage year 2023–2024 CSAPR NO_x Ozone Season Group 2 allowances previously allocated to sources in Group 3 states and areas of Indian country and recorded in the sources' compliance accounts. The proposed recall provisions would apply to all sources in jurisdictions newly added to the Group 3 trading program in whose compliance accounts CSAPR NO_x Ozone Season Group 2 allowances for a control period in 2023 or 2024 were recorded, including sources where some or all units have permanently retired or where the previously recorded 2023–2024 allowances have been transferred out of the compliance account. The proposed recall provisions provide a flexible compliance schedule intended to accommodate any sources that have already transferred the previously recorded 2023–2024 allowances out of their compliance accounts and allows Group 2 allowances of earlier vintages to be surrendered to achieve compliance. Like the similar recall

provisions finalized in the Revised CSAPR Update, the proposed recall provisions include specifications for how the recall provisions apply in instances where a source and its allowances have been transferred to different parties and for the procedures that the EPA will follow to implement the recall.

Under the Group 2 trading program regulations, each Group 2 allowance is a "limited authorization to emit one ton of NO_x during the control period in one year," where the relevant limitations include the EPA Administrator's authority "to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act." 40 CFR 97.806(c)(6)(ii). The Administrator proposes to determine that, in order to effectively implement the Group 2 trading program as a compliance mechanism through which states not subject to the Group 3 trading program may continue to meet their obligations under CAA section 110(a)(2)(D)(i)(I) with regard to the 2008 ozone NAAQS, it is necessary to limit the use of Group 2 allowances equivalent in quantity and usability to all Group 2 allowances previously allocated for the 2023–2024 control periods and recorded in the compliance accounts of sources in the newly added Group 3 jurisdictions. The Group 2 allowances that have already been allocated to sources in the newly added Group 3 states for the 2023–2024 control periods and recorded in the sources' compliance accounts represent the substantial majority of the total remaining quantity of Group 2 allowances that have been allocated and recorded for the 2023–2024 control periods and that were not already made subject to recall when other jurisdictions were transferred from the Group 2 trading program to the Group 3 trading program in the Revised CSAPR Update. Because allowances can be freely traded, if the use of the 2023–2024 Group 2 allowances previously recorded in newly added Group 3 sources' compliance accounts (or equivalent Group 2 allowances) were not limited, the effect would be the same as if the EPA had issued to sources in the states that will remain covered by the Group 2 trading program a quantity of allowances available for compliance under the 2023–2024 control periods many times the levels that the EPA determined to be appropriate emissions budgets for these states in the CSAPR Update. Through the use of banked allowances, the excess Group 2

allowances would affect compliance under the Group 2 trading program in control periods after 2024 as well. Continued implementation of the Group 2 trading program at levels of stringency consistent with the levels contemplated under the CSAPR Update therefore requires that the EPA limit the use of the excess allowances, as the EPA is proposing here.

In this rulemaking, the EPA proposes to implement limitations on the use of the excess 2023–2024 Group 2 allowances through requirements to surrender, for each 2023–2024 Group 2 allowance recorded in a newly added Group 3 source's compliance account, one Group 2 allowance of equivalent usability under the Group 2 trading program. The surrender requirements would apply to the owners and operators of the Group 3 sources in whose compliance account the excess 2023–2024 Group 2 allowances were initially recorded. In general, each source's current owners and operators would be required to comply with the surrender requirements for the source by ensuring that sufficient allowances to complete the deductions are available in the source's compliance account by one of two possible deadlines discussed below. However, an exception would be provided if a source's current owners and operators obtained ownership and operational control of the source in a transaction that did not include rights to direct the use and transfer of some or all of the 2023–2024 Group 2 allowances allocated and recorded (either before or after that transaction) in the source's compliance account. The proposed rule provides that in such a circumstance, with respect to the 2023–2024 Group 2 allowances for which rights were not included in the transaction, the surrender requirements would apply to the most recent former owners and operators of the source before any such transactions occurred. Because in this situation a source's former owners and operators might lack the ability to access the source's compliance account for purposes of complying with the surrender requirements, the former owners and operators would instead be allowed to meet the surrender requirements with Group 2 allowances held in a general account.³⁰⁰

To provide as much flexibility as possible consistent with the need to limit the use of the excess Group 2 allowances, for each 2023–2024 Group 2 allowance recorded in a Group 3

source's compliance account, the EPA proposes to accept the surrender of either the same specific 2023–2024 Group 2 allowance or any other Group 2 allowance with equivalent (or greater) usability under the Group 2 trading program. Thus, a surrender requirement with regard to a Group 2 allowance allocated for the 2023 control period could be met through the surrender of any Group 2 allowance allocated for the 2023 control period or the control period in any earlier year—in other words, any 2017–2023 Group 2 allowance.³⁰¹ Similarly, the surrender requirement with regard to a 2024 Group 2 allowance could be met through the surrender of any 2017–2024 Group 2 allowance.

Owners and operators subject to the surrender requirements could choose from two possible deadlines for meeting the requirements. The first deadline would be 15 days after the effective date of a final rule in this rulemaking.³⁰² As soon as practicable or after this date, the EPA would make a first attempt to complete the deductions of Group 2 allowances required for each Group 3 source from the source's compliance account. The EPA would deduct Group 2 allowances first to address any surrender requirements for the 2023 control period and then to address any surrender requirements for the 2024 control period. When deducting Group 2 allowances to address the surrender requirements for each control period, EPA would first deduct allowances allocated for that control period and then would deduct allowances allocated for each successively earlier control period. This order of deductions is intended to ensure that whatever Group 2 allowances are available in the account are applied to the surrender requirements in a manner that both maximizes the extent to which all of the source's surrender requirements would be met and also ensures that any Group 2 allowances left in the source's

compliance account after completion of all required deductions would be the earliest allocated, and therefore most useful, Group 2 allowances possible. Among the Group 2 allowances allocated for a given control period, The EPA would first deduct allowances that were initially recorded in that account, in the order of recordation, and would then deduct allowances that were transferred into that account after having been initially recorded in some other account, in the order of recordation.

Following the first attempt to deduct Group 2 allowances to address Group 3 sources' surrender requirements, the EPA would send a notification to the designated representative for each such source (as well as any alternate designated representative) indicating whether all required deductions were completed and, if not, the additional amounts of Group 2 allowances usable in the 2023 or 2024 control periods that must be held in the appropriate account by the second surrender deadline of September 15, 2023. Each notification would be sent to the email addresses most recently provided to the EPA for the recipients and would include information on how to contact the EPA with any questions. The EPA proposes that no allocations of Group 3 allowances would be recorded in a source's compliance account until all the source's surrender requirements with regard to 2023–2024 Group 2 allowances have been met. For this reason, the principal consequence to a source of failure to fully comply with the surrender requirements by 15 days after the effective date of a final rule would be that any Group 3 allowances allocated to the units at the source for the 2023 and 2024 control periods that would otherwise have been recorded in the source's compliance account by 30 days after the effective date of a final rule would not be recorded as of that recordation date.

If all surrender requirements of 2023–2024 Group 2 allowances for a source have not been met in EPA's first attempt, the EPA would make a second attempt to complete the required deductions from the source's compliance account (or from a specified general account, in the limited circumstance noted above) as soon as practicable on or after September 15, 2023. The order in which Group 2 allowances are deducted would be the same as described above for the first attempt.

If the second attempt to deduct Group 2 allowances to meet the surrender requirements through deductions from the source's compliance account (or

³⁰¹ The first control period for the Group 2 trading program was in 2017.

³⁰² As discussed later in this section and in Section VII.B.9.b, the EPA is proposing to condition recordation of any allocations of Group 3 allowances in a source's compliance account on the source's prior compliance with the proposed recall requirements for Group 2 allowances. The purpose of providing a first deadline for the recall provisions 15 days after a final rule's effective date would be to ensure that sources have an early opportunity to comply with the recall provisions in order to be eligible to have allocations of Group 3 allowances recorded in their accounts as proposed 30 days after the final rule's effective date. Because the vast majority of sources subject to the proposed recall provisions already hold sufficient Group 2 allowances to comply with the recall provisions, the EPA anticipates that the sources would easily be able to comply with the proposed first recall deadline.

³⁰⁰ The EPA is currently unaware of any source that would need to use this flexibility but has included the option in the proposal to address the theoretical possibility of such a situation.

from a specified general account) is unsuccessful for a given source, the EPA proposes that as soon as practicable on or after November 15, 2023, to the extent necessary to address the unsatisfied surrender requirements for the source, the EPA would deduct the 2023–2024 Group 2 allowances that were initially recorded in the source’s compliance account from whatever accounts the allowances are held in as of the date of the deduction, except for any allowances where, as of April 1, 2022, no person with an ownership interest in the allowances was an owner or operator of the source, was a direct or indirect parent or subsidiary of an owner or operator of the source, or was directly or indirectly under common ownership with an owner or operator of the source.³⁰³ Before making any deduction under this provision, the EPA would send a notification to the authorized account representative for the account in which the allowance is held and would provide an opportunity for submission of objections concerning the data upon which the EPA is relying. In EPA’s view, this provision would not unduly interfere with the legitimate expectations of participants in the allowance markets because the provision would not be invoked in the case of any allowance that was transferred to an independent party in an arms-length transaction before EPA’s intent to recall 2023–2024 Group 2 allowances became widely known. The provision would apply only to a Group 2 allowance that, as of April 1, 2022, was still controlled either by the owners and operators of the source in whose compliance account it was initially recorded or by an entity affiliated with such an owner or operator. The EPA believes that by April 1, 2022, all market participants will have had ample opportunity to become informed of the proposed rule provisions to recall 2023–2024 Group 2 allowances recorded in Group 3 sources’ compliance accounts, particularly since the EPA implemented a closely analogous recall of Group 2 allowances in the Revised CSAPR Update.³⁰⁴

³⁰³ The proposed provision under which the EPA would not deduct Group 2 allowances transferred to unrelated parties before April 1, 2022 from the transferees’ accounts would not relieve the source to which the Group 2 allowances were originally allocated from the obligation to comply with the recall requirements. Specifically, the source would be required to comply with the recall requirements by obtaining and surrendering other Group 2 allowances.

³⁰⁴ Even before publication of the proposed rule, the EPA posted information on its websites to notify market participants that a pending rulemaking could have consequences for the value and usability of Group 2 allowances. The posted locations

The EPA proposes that failure of a source’s owners and operators to comply with the surrender requirements would be subject to possible enforcement as a violation of the CAA, with each allowance and each day of the control period constituting a separate violation.

To eliminate any possible uncertainty regarding the amounts of Group 2 allowances allocated for the 2023–2024 control periods (or earlier control periods) that the owners and operators of each Group 3 source would be required to surrender under the recall provisions, the EPA has prepared a list of the sources in the proposed additional Group 3 states and areas of Indian country in whose compliance accounts allocations of 2023–2024 Group 2 allowances were recorded, with the amounts of the allocations recorded in each such compliance account for the 2023 and 2024 control periods. An additional list shows, for each newly added Group 3 source, the specific Group 2 allowances (batched by serial number) allocated for each control period and recorded in the source’s compliance account and indicates whether, as of December 31, 2021, that batch of allowances was held in the source’s compliance account, in an account believed to be partially or fully controlled by a related party (*i.e.*, an owner or operator of the source or an affiliate of an owner or operator of the source), or in an account believed to be fully controlled by independent parties. The lists are in a spreadsheet titled, “Recall of Additional CSAPR NO_x Ozone Season Group 2 Allowances”, available in the docket for this proposed rule. After the first and second surrender deadlines, the EPA intends to update the lists to indicate for each Group 3 source whether the surrender requirements for the source under the recall provisions have been fully satisfied. The EPA would post the updated lists on a publicly accessible website to ensure that all market participants have the ability to determine which specific 2023–2024 Group 2 allowances initially recorded in any given Group 3 source’s compliance account do or do not remain subject to potential deduction to address the source’s surrender requirements under the recall provisions.

The EPA requests comment on the proposal to recall Group 2 allowances

included the electronic portal that authorized account representatives use to enter allowance transfers for recordation by the EPA in the Allowance Management System. Additionally, the EPA emailed a notice identifying the possibility of such consequences to the representatives for all Allowance Management System accounts.

equivalent in quantity and usability to the Group 2 allowances previously issued for the 2023 and 2024 control periods and recorded in the compliance accounts of sources in jurisdictions being newly added to the Group 3 trading program in this proposed rule.

12. Conforming Revisions to Other Regulations

As noted in Section VII.B.1.a of this proposed rule, in addition to the Group 3 trading program, EPA currently administers five other CSAPR trading programs, all of which have provisions that in most respects parallel the provisions of the Group 3 trading program.³⁰⁵ The EPA also administers the Texas SO₂ Trading Program, whose provisions parallel the provisions of the CSAPR trading programs to a somewhat lesser extent.³⁰⁶ In this rulemaking, in addition to the proposed revisions to the Group 3 trading program, the EPA is proposing a small number of conforming revisions to the other CSAPR trading programs and/or the Texas SO₂ Trading Program to maintain consistency across the regulations for the various trading programs to the extent possible.

The first set of proposed conforming revisions concerns the use of the term “Indian country” in the allowance allocation provisions of the regulations for all the CSAPR trading programs. As discussed in Section VII.B.9.a of this proposed rule, to reflect the D.C. Circuit’s holding in *ODEQ v. EPA* that states have initial CAA implementation planning authority in non-reservation areas of Indian country until displaced by a demonstration of tribal jurisdiction over such an area, the EPA is proposing to revise the allowance allocation provisions in the Group 3 trading program regulations so that, instead of distinguishing between the sets of units within a given state’s borders that either are not or are in Indian country, the revised regulations would distinguish between (1) the set of units within the state’s borders that are not in Indian country or are in areas of Indian country covered by the state’s CAA implementation planning authority and (2) the set of units within the state’s borders that are in areas of Indian country not covered by the state’s CAA implementation planning authority. For the same reasons stated in Section VII.B.9.a of this proposed rule for the

³⁰⁵ The regulations for the Group 3 Trading Program are at 40 CFR 97, subpart GGGGG. The regulations for the other five CSAPR trading programs are at 40 CFR part 97, subparts AAAAA, BBBBB, CCCCC, DDDDD, and EEEEE.

³⁰⁶ The regulations for the Texas SO₂ Trading Program are at 40 CFR part 97, subpart FFFFF.

Group 3 trading program, the EPA proposes to make revisions to the allowance allocation provisions in the regulations for all the other CSAPR trading programs establishing the same substantive distinction among the sets of units within each state's borders. The specific regulatory provisions that would be affected are identified in Section X of this proposed rule. The EPA is unaware of any currently operating units that would be affected by this proposed revision to the regulations for the other CSAPR trading programs.

The second set of proposed conforming revisions concerns the schedule for recording allocations of allowances to existing units. To maintain consistency with the provisions of the revised Group 3 Trading Program to the extent possible, the EPA proposes to revise the regulations for each of the other five CSAPR trading programs and the Texas SO₂ Trading Program to reflect whatever revised schedule for recording most allowance allocations the EPA may adopt for the revised Group 3 trading program in a final rule in this rulemaking. The proposed revisions to the recordation deadlines would affect only the timing of recordation, not the amounts of allowances allocated to and recorded for any source for any control period.

The effect of the proposed revisions would be to establish a new common recordation schedule for all the CSAPR trading programs and the Texas SO₂ Trading Program. Assuming the common schedule adopted is the specific schedule proposed for the Group 3 trading program in Section VII.B.9 of this proposed rule, allocations from the portion of each state emissions budget under each program not reserved in a set-aside would be recorded by July 1 of the year immediately preceding the year of the relevant control period. Under the current regulations before the proposed revisions, the equivalent recordation deadline is July 1 of the year three years before the year of the relevant control period. Relatedly, the EPA also proposes to revise the deadline for states to submit any state-determined allocations to the EPA under each trading program to June 1 of the year immediately preceding the year of the relevant control period, instead of June 1 of the year three years before the year of the relevant control period.³⁰⁷

³⁰⁷ The regulations for the various programs already establish a common recordation schedule for the portion of each state emissions budget set aside for possible allocation to new units—namely, by May 1 of the year after the year of the relevant control period. The related deadline for states to

This EPA believes that revising the recordation schedules as proposed to establish a new common recordation schedule for the affected trading programs would make the programs procedurally more consistent, generally reducing the time and cost expended by sources to understand and comply with multiple trading programs. Greater consistency across the various programs would also support greater administrative efficiency by the EPA and by states that elect to determine allowances allocations under the various programs. In addition, by reducing the number of future control periods for which allowances are recorded, the proposed revisions would reduce the likelihood that the EPA might need to recall already-recorded allowances as part of a transition for some sources to new regulatory requirements in a future rulemaking. The EPA has implemented such a recall in the Revised CSAPR Update and has proposed to implement a similar recall in this rulemaking.

Finally, the EPA believes that revising the recordation schedules for the other CSAPR trading programs and the Texas SO₂ Trading Program as proposed would not adversely impact allowance market liquidity. Allowances issued for control periods through 2024 under each of these programs were recorded by July 1, 2020. As of December 2021, although recorded private transfers of earlier vintage allowances usable for 2021 compliance have been increasing in advance of the upcoming June 1, 2022, compliance deadline for the 2021 control periods, few allowances recorded for the 2023 or 2024 control periods (or even the 2022 control period) under any of the programs have been transferred out of the accounts in which they were initially recorded, except as needed to comply with the recall of certain allowances under the Revised CSAPR Update. Moreover, most of the recorded transfers of allowances issued for 2022, 2023, and 2024 have been between accounts controlled by the same entity, corporate affiliates, or other related entities (such as unit co-owners) rather than between accounts controlled by unrelated parties. The EPA therefore believes there would have been little effect on arms-length allowance market activity in these programs if the proposed revised recordation schedule had already been in effect and the allowances for 2023

submit any state-determined allocations of these allowances to the EPA under each program is April 1 of the year after the year of the relevant control period.

and 2024 consequently had not yet been recorded.

Further details on the specific regulatory provisions that would be affected by the proposed revisions to allowance allocation recordation schedules are provided in Section X of the proposed rule.

The EPA requests comment on the proposed revision to the definition of “Indian country” under the CSAPR NO_x Annual, NO_x Ozone Season Group 1, SO₂ Group 1, SO₂ Group 2, and NO_x Ozone Season Group 2 Trading Programs and the proposed revisions to the allowance allocation recordation deadlines under the CSAPR NO_x Annual, NO_x Ozone Season Group 1, SO₂ Group 1, SO₂ Group 2, and NO_x Ozone Season Group 2 Trading Programs and the Texas SO₂ Trading Program.

C. Regulatory Requirements for Non-EGUs

The EPA is proposing that the FIPs for 23 of the states covered in this proposed rule will include new emissions limitations on emissions units in seven non-EGU industries that EPA finds (as discussed in Section VI of this proposed rule) to be significantly contributing to nonattainment or interfering with maintenance in other states.

In order to achieve the necessary non-EGU emissions reductions for the 23 states, the EPA proposes emissions limitations for the most impactful units in the relevant industries that are achievable with the control technologies identified in the Step 3 analysis. The EPA is proposing a direct control approach with rate-based limits, production-based limits, and work practice standards set on a uniform basis for the different segments of non-EGU emissions units using applicability criteria based on size and type of unit and, in some cases, emissions thresholds. The EPA believes this approach can achieve the requisite level of emissions reductions from the covered units through the assignment of emissions limits that are achievable across the entire segment. The EPA believes that establishing emissions limits for emissions units based on size and type of unit and, in some cases, emissions thresholds, will achieve the necessary reductions without requiring a unit-by-unit assessment.³⁰⁸ By

³⁰⁸ If an emissions unit installs SCR or SNCR to meet an emissions limit in response to the proposed FIP that would be a physical change under new source review (NSR) and lead to an assessment of potential emissions changes. If the installation of SCR results in an emissions increase that exceeds the thresholds in the NSR regulations for one or more regulated NSR pollutants, including the

establishing uniform emissions limits for categories of units rather than on a unit-by-unit basis, the EPA can also ensure that any new source of emissions constructed after this proposed rulemaking are also subject to the emissions limits identified later (*see* Section IV.B.1.d of this proposed rule).

The EPA recognizes that the numerous variables that contribute to differences in units' emissions rates may complicate development of limits for groups of units as large as those addressed in this proposed rule. For each emissions source category, the EPA considered the range of emissions limits that currently apply to these sources under other CAA programs, such as RACT, NSPS, NESHAP, and OTC model rules, to develop an emissions limit that should be achievable by all sources after installing the controls identified in the Step 3 analysis. For a detailed discussion of the technical bases for EPA's proposed requirements for non-EGU emissions units, *see* the Non-EGU Sectors TSD.

The EPA is proposing that the emissions limits and compliance requirements for non-EGUs will apply only during the ozone season (which runs annually from May–September). This is consistent with EPA's prior practice in federal actions to eliminate significant contribution of ozone in the 1998 NO_x SIP Call, CAIR, CSAPR, CSAPR Update, and the Revised CSAPR Update. EPA is seeking comment on whether non-EGU sources would run controls that would be installed as a result of this proposed FIP year-round (*i.e.*, will some source categories run their controls year-round due to the nature of those controls?).

In addition, the EPA proposes to apply the FIP requirements to all existing emissions units and any future emissions units constructed after the promulgation of a final rule. Further, the non-EGU emissions limits and compliance requirements will apply in all 23 states (and, as discussed in Section IV.C.2 of this proposed rule, in areas of Indian country within the borders of those states), even if some of those states do not currently have emissions units in a particular source category. This approach will ensure that all new sources constructed in any of the 23 states will be subject to the same regulatory requirements as applied for the existing units under this proposed rule. This will also mitigate any potential incentive to move production from an existing non-EGU source in one linked state to a new non-EGU source of

the same type but lacking the relevant emissions control requirements in another linked state.

At this time, this EPA is not proposing to include non-EGUs in the trading program described in this proposed rule. If EPA were to include non-EGUs in the trading program, we would require monitoring and reporting of hourly mass emissions in accordance with 40 CFR part 75 as we have required for all trading programs. Monitoring and reporting under part 75 include CEMS (or an approved alternative method), rigorous initial certification testing, and periodic quality assurance testing thereafter, such as relative accuracy test audits and daily calibrations. This type of consistent and accurate measurement of emissions is necessary to ensure each allowance actually represents one ton of emissions and that one ton of reported emissions from one source would be equivalent to one ton of reported emissions from another source. *See* 75 FR 45325 (August 2, 2010). Moreover, these monitoring requirements generally would need to be in place for at least one full ozone season to establish baseline data before it would be appropriate to rely on a trading program as the mechanism to achieve the required emissions reductions. Therefore, at this time, the EPA believes that applying unit-level emissions limitations on non-EGU emissions units rather than constructing an emissions trading regime is more administratively feasible and more easily implementable at the source level, and it will effectively eliminate each state's significant contribution without the need for establishing a new emissions trading program.

The EPA is proposing to require electronic reporting for all seven non-EGU industries. Specifically, owners and operators of affected units must submit electronic copies of required performance test reports, performance evaluation reports, quarterly and semi-annual reports, and excess emissions reports through EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). The EPA is proposing to require that performance test results collected using test methods that are supported by EPA's Electronic Reporting Tool (ERT) as listed on the ERT website³⁰⁹ at the time of the test be submitted in the format generated through the use of the ERT or an electronic file consistent with the xml schema on the ERT website, and that other performance test results be

submitted in portable document format (PDF) using the attachment module of the ERT. Similarly, the EPA is proposing to require that performance evaluation results of CEMS measuring relative accuracy test audit (RATA) pollutants that are supported by the ERT at the time of the test be submitted in the format generated through the use of the ERT or an electronic file consistent with the xml schema on the ERT website, and that other performance evaluation results be submitted in PDF using the attachment module of the ERT. In addition, the EPA is proposing to require that quarterly and semi-annual reports and excess emissions reports be submitted in PDF uploaded in CEDRI.

The EPA is proposing to allow for an extension of time to file a report where an owner or operator demonstrates that it cannot meet the reporting deadline for reasons outside of its control. Specifically, the EPA has identified two broad circumstances under which the EPA may grant a request for an extension of time to file an electronic report. These circumstances are (1) outages of EPA's CDX or CEDRI which preclude an owner or operator from accessing the system and submitting required reports and (2) *force majeure* events, which are defined as events that will be or have been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevent an owner or operator from complying with the requirement to submit a report electronically. Examples of *force majeure* events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility. In both circumstances, the decision to grant an extension of time to report is within the discretion of the Administrator, and reporting should occur as soon as possible.

Electronic submittal of required reports will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing

netting analysis, the changes would trigger the applicability of NSR.

³⁰⁹ <https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>.

data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, EPA, and the public. Moreover, electronic reporting is consistent with EPA’s plan³¹⁰ to implement Executive Order 13563 and is in keeping with EPA’s agency-wide policy³¹¹ developed in response to the White House’s Digital Government Strategy.³¹²

The EPA notes that no emissions standard or other requirement established for non-EGUs in these FIPs may be interpreted, construed, or applied to diminish or replace the requirements of any emissions limitation or other applicable requirement established by the Administrator pursuant to other CAA authority or a standard issued under State authority.

1. Pipeline Transportation of Natural Gas

Applicability

The EPA is proposing to establish regulatory requirements for the Pipeline Transportation of Natural Gas industry that apply to stationary, natural gas-fired, spark ignited reciprocating internal combustion engines (“stationary SI engines”) within these facilities that have a maximum rated capacity of 1,000 horsepower (hp) or greater. Based on our review of the potential emissions from stationary SI engines, we find that use of a maximum rated capacity of 1,000 hp reasonably approximates the selection of 100 tpy used within the non-EGU screening assessment. Therefore, stationary SI engines subject to the proposed rule requirements of this section are those found within any of the 23 covered states with non-EGU emissions reduction obligations that are within the Pipeline Transportation of Natural Gas

industry and have a maximum rated capacity of 1,000 hp or greater.

Emissions Limitations and Rationale

In developing the emissions limits for the Pipeline Transportation of Natural Gas industry, EPA reviewed RACT NO_x rules, air permits, and OTC model rules. While some permits and rules express engine emissions limits in parts per million by volume (ppmv), the majority of rules and source-specific requirements express the emissions limits in grams per horsepower per hour (g/hp-hr). The EPA has historically set emissions limits for these types of engines using g/hp-hr and finds that method appropriate for this proposed FIP as well.

Based on the available information for this industry, applicable State and local air agency rules, and active air permits issued to sources with similar engines, the EPA is proposing the following emissions limits for stationary SI engines in the covered states:

TABLE VII.C–1—SUMMARY OF PROPOSED NO_x EMISSIONS LIMITS FOR PIPELINE TRANSPORTATION OF NATURAL GAS

Engine type and fuel	Proposed NO _x emissions limit	Additional information
Natural Gas Fired Four Stroke Rich Burn	1.0 g/hp-hr	Limits reviewed ranged between 0.2 and 3.0 g/hp-hr.
Natural Gas Fired Four Stroke Lean Burn	1.5 g/hp-hr	Limits reviewed ranged between 0.5 and 3.0 g/hp-hr.
Natural Gas Fired Two Stroke Lean Burn	3.0 g/hp-hr	Limits reviewed ranged between 0.5 and 3.0 g/hp-hr.

With regard to four stroke rich burn engines, the EPA is proposing an emissions limit of 1.0 g/hp-hr. This limit is designed to be achievable by installing Non-Selective Catalytic Reduction (NSCR) on existing four stroke rich burn engines, as identified in the non-EGU screening assessment. Sources are free to install another control technology besides NSCR as long as the unit is still able to meet the emissions limit. In particular for four stroke rich burn engines, NSCR can be an effective control technology due to the low oxygen percentage in the exhaust. Efficient operation of the catalyst in NSCR requires the engine exhaust gases contain no more than 0.5 percent oxygen, which makes rich burn engines uniquely suitable to NSCR. Given that NSCR can achieve NO_x reductions of 90 to 99 percent, the EPA believes an emissions limit of 1.0 g/hp-

hr should be readily achievable by all four stroke rich burn engines subject to this proposed rulemaking. The EPA is taking comment on whether a lower emissions limit is more appropriate since even an assumed reduction of 95 percent would result in most engines being able to achieve an emissions rate of 0.5 g/hp-hr. However, at this time, the EPA does not have the information necessary to determine if a lower emissions limit is achievable for the four stroke rich burn engines subject to the proposed rulemaking, and therefore, the EPA is proposing an emissions limit of 1.0 g/hp-hr.

With regard to four stroke lean burn engines, the EPA is proposing an emissions limit of 1.5 g/hp-hr. This limit is designed to be achievable by installing SCR on existing four stroke lean burn engines. Sources are free to install another control technology with or without SCR as long as the unit is

still able to meet the emissions limit. For example, it might be more cost effective on an ongoing basis for some four stroke lean burn engines to install layered combustion controls alone or along with SCR to achieve the necessary emissions reductions. Information available to the EPA suggests that some four stroke lean burn engines can achieve 90% reductions from layered combustion controls alone, such as turbochargers and inter-cooling, pre-chamber ignition or high energy ignition, improved fuel injection control, air/fuel ratio control.³¹³ Independent of unit specific considerations, the EPA believes that four stroke lean burn engines subject to this proposed FIP can achieve an emissions limit of 1.5 g/hp-hr with the installation and operation of SCR or other control technologies at the marginal cost threshold of \$7,500 per

³¹⁰ EPA’s Final Plan for Periodic Retrospective Reviews, August 2011. Available at: <https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154>.

³¹¹ E-Reporting Policy Statement for EPA Regulations, September 2013. Available at: <https://www.epa.gov/sites/production/files/2016-03/documents/epa-e-reporting-policy-statement-2013-09-30.pdf>.

³¹² Digital Government: Building a 21st Century Platform to Better Serve the American People, May 2012. Available at: <https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html>. For more information on the benefits of electronic reporting, see the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission*

Standards for Hazardous Air Pollutants (NESHAP) Rules, referenced earlier in this section.

³¹³ Ozone Transport Commission, *Technical Information Oil and Gas Sector Significant Stationary Sources of NO_x Emissions*, 35–39, October 17, 2012.

ton identified in the non-EGU screening assessment. While a lower emissions limit may be achievable with SCR for some four stroke lean burn engines, the achievability of those lower limits may depend on engine age and come with increased costs not accounted for in this proposed rule. The EPA is seeking comment on whether a lower and higher emissions limit is appropriate for these units.

For two stroke lean burn engines, the EPA is currently proposing an emissions limit of 3.0 g/hp-hr. This limit is designed to be achievable by retrofitting existing two stroke lean burn engines with layered combustion to achieve this emissions limit. Sources are free to install another control technology besides layered combustion as long as the unit is still able to meet the emissions limit. As identified in the non-EGU screening assessment, the EPA believes that layered combustion controls, such as improved airflow, improved fuel to air mixing, improved ignition, and modern engine electronic controls can be achieved on two stroke engines at the marginal cost threshold of \$7,500 per ton. With these types of controls, the information currently available to the EPA indicates that the amount of achievable emissions reductions is unit specific and can range from a 60 to 90 percent reduction in NO_x emissions. The EPA estimates that existing uncontrolled two stroke lean burn engines would need to reduce emissions by about 80 percent to comply with a 3.0 g/hp-hr emissions limit. While some RACT and model rules reviewed contained more stringent emissions limits for two stroke lean burn engines, the EPA does not have information adequate to conclude that the two stroke lean burn engines across all 23 states can meet a lower limit. Further, some information available supports a finding that an emissions limit below 3.0 g/hp-hr might not be achievable with layered combustion controls alone for some units, and those units would require additional controls beyond our cost threshold.³¹⁴ Therefore, the EPA is proposing an emissions limit of 3.0 g/bhp-hr for two stroke engines. The EPA is seeking comment on whether a lower emissions limit would be achievable with layered combustion alone for the sources covered by this FIP. Further, the EPA is seeking comment on whether additional control technology could be installed on these

sources at or below the marginal cost threshold to achieve a lower emissions rate.

Compliance Assurance Requirement

The EPA is proposing to require stationary SI engines subject to this proposed FIP to conduct semi-annual performance testing in accordance with 40 CFR 60.8 to ensure that the engine is meeting the NO_x emissions limit. The EPA is proposing that affected engines then monitor and record hours of operation and fuel consumption to calculate ongoing compliance with the applicable emissions limit. In addition, the EPA is proposing that affected engines would use continuous parametric monitoring systems (CPMS) to ensure that the NO_x emissions limit is being met at all times. For example, engines utilizing layered combustion controls would need to monitor and record temperature, air to fuel ratio, and other parameters as appropriate to ensure that combustion conditions are optimized to reduce NO_x emissions and assure compliance with the emissions limit. For engines using SCR or NSCR, the EPA is proposing that source monitor and record parameters such as inlet temperature to the catalyst and pressure drop across the catalyst.

The EPA is seeking comment on whether it is feasible or appropriate to require affected engines to be equipped with continuous emissions monitoring systems (CEMS) to measure and monitor the NO_x emissions instead of conducting performance tests on a semiannual basis.

2. Cement and Concrete Product Manufacturing

Applicability

The EPA is proposing to establish regulatory requirements for the Cement and Concrete Product Manufacturing source category that apply to emissions units (kilns) that directly emit or have the potential to emit 100 tpy or more of NO_x. Further, the EPA is proposing emissions limits based on type of unit to ensure that the necessary NO_x emissions reductions occur. The EPA is seeking comment on whether it should set an applicability threshold based on a unit's design production capacity rather than an emissions threshold.

Emissions Limitations and Rationale

In developing the emissions limits for the Cement and Concrete Manufacturing

industry, the EPA reviewed RACT NO_x rules, air permits, and consent decrees. These rules and source-specific requirements most commonly express the emissions limits for this industry in terms of mass of pollutant emitted (pounds) per kiln's clinker output (tons), *i.e.*, pounds of NO_x emitted per ton of clinker produced. A regulated entity routinely monitors and keeps track of its clinker output as it pertains to a kiln design capacity and the plant's production. Therefore, the EPA believes that this form of NO_x emissions limit is effective, practicable and convenient to record and report to an air agency.

In determining the averaging time for the limit, the EPA considered the NSPS for Portland Cement Plants at 40 CFR part 60, subpart F. Section 60.62(a)(3) of this subpart establishes a 30-operating day rolling average period for the NO_x emitted per ton of clinker produced and further states that an operating day includes all valid data obtained in any daily 24-hour period during which the kiln operates and excludes any measurements made during the daily 24-hour period when the kiln was not operating. In addition, 40 CFR 60.44b(i) requires that compliance with the applicable NO_x emissions limit be determined on a 30-day rolling average basis. The EPA is proposing to require a 30-operating day rolling average period as the averaging time frame for this particular industry. The proposed averaging timeframe is consistent with the longstanding national technology-based NSPS for this industry at 40 CFR part 60, subpart F. Furthermore, an air agency may choose to require an averaging period shorter than a 30-operating day rolling average in air permit(s) issued to these plants. The EPA finds that a 30-operating day rolling average period provides a reasonable balance between short term (hourly or daily) and long term (annual) averaging periods, while being flexible and responsive to fluctuations in operations and production.

Based on the available information for this industry, applicable State and local air agency rules, and active air permits or enforceable orders issued to affected cement plants, the EPA is proposing the following emissions limits for cement kilns:

³¹⁴ Ozone Transport Commission, *Technical Information Oil and Gas Sector Significant Stationary Sources of NO_x Emissions* at 24–25.

TABLE VII.C-2—SUMMARY OF PROPOSED NO_x EMISSIONS LIMITS FOR KILN TYPES IN CEMENT AND CONCRETE PRODUCT MANUFACTURING

Kiln type	Proposed NO _x emissions limit (lb/ton of clinker)	Additional information
Long Wet	4.0	Limits reviewed ranged between 3.88–5.2; one State rule allows as high as 6.0; with addition of a post combustion NO _x control the upper range could be reduced significantly.
Long Dry	3.0	Limits reviewed showed 5.1; with addition of post combustion NO _x control the limit could be reduced significantly; limit of 3.0 would achieve a 41% reduction in NO _x emissions.
Preheater	3.8	Limits reviewed ranged between 1.5–3.44; limit of 3.8 is consistent with 30 TAC 117.3110(a)(3) and 35 IAC 217.224(a).
Precalciner	2.3	Requires post combustion NO _x control; consistent with permit A0017 for Lehigh Southwest Cement Company issued on May 5, 2020 by the Bay Area Air Quality Management District.
Preheater/Precalciner	2.8	Limits reviewed ranged between 1.8–3.4; limit of 2.8 is consistent with 30 TAC 117.3110(a)(4); Mitsubishi Cement Corporation Lucerne Valley Federal Operating Permit 11800001 issued by the Mojave Desert Air Quality Management District (MDAQMD) June 18, 2020; MDAQMD Rule 1161 (C)(2); and Illinois 35 IAC 217.224(a).

Although the EPA is proposing NO_x emissions limits based on the specific kiln types listed in Table VII.C-2, to

provide operational flexibility the EPA is also proposing a source cap limit expressed in tons per day (tpd) of NO_x

for each individual cement plant according to the following equation.

$$CAP2015\ Ozone\ Transport = \frac{(KW \times NW) + (KD \times ND)}{(2000 \frac{pounds}{ton} \times 365 \frac{days}{year})}$$

Where:

CAP2015 Ozone Transport = total allowable NO_x emissions from all cement kilns located at one cement plant, in tons per day, on a 30-operating day rolling average basis;

KD = 1.7 pounds NO_x per ton of clinker for dry preheater-precaciner or precaciner kilns;

KW = 3.4 pounds NO_x per ton of clinker for long wet kilns;

ND = the average annual production in tons of clinker plus one standard deviation for the three most recent calendar years from all dry preheater-precaciner or precaciner kilns located at one cement plant; and

NW = the average annual production in tons of clinker plus one standard deviation for the three most recent calendar years from all long wet kilns located at one cement plant.

An affected cement plant will need to comply with both the source cap limit and the specific NO_x emissions limits assigned to its individual kiln type(s). The EPA notes that the above source cap would be calculated and assigned to operating kilns in a particular plant. That is, the total allowable NO_x emissions in tpd from one plant cannot be traded with another plant, regardless of these plants' control of ownership or operator's status, or regardless of these plants' proximity to each other or their location.

The EPA is soliciting comment on whether it is feasible or appropriate to phase out and retire existing long wet

kilns in the affected states and to replace them with more energy efficient and less emitting units like preheater/precaciner installations. The EPA is also requesting comment on the time needed to complete such a task. It has been shown that such kilns replacements (preheater/precaciner kilns), when equipped with post-combustion NO_x control devices such as SNCR, are capable of meeting NO_x emissions limit of 1.5 lb/ton of clinker on a 30-operating day basis. For this reason, the EPA proposes to find that conversion from long wet kilns to preheater/precaciner installations is generally feasible. Given that long wet kilns are less energy efficient and generally emit more NO_x than other kiln types, conversion to preheater/precaciner installations would be the most effective method of NO_x reduction (per ton of clinker produced).

Additionally, EPA is soliciting comments on whether it is feasible or appropriate to require sources with existing preheater/precaciner kilns in the affected states that currently utilize low NO_x burners, combustion controls, staged combustion, or mid-kiln firing to add and operate a post combustion control device like SNCR or SCR to further improve their NO_x removal efficiency and lower NO_x emissions to 1.95 lb/ton of clinker or less. The EPA is also requesting comments on the time needed to complete such an addition.

We note that the EPA previously stated that it expects that the controls for cement kilns would take at least 2 years to install on a sector-wide basis across the 12-state region affected by the Revised CSAPR Update.³¹⁵

Compliance Assurance Requirements

The EPA is proposing that performance tests be conducted on a semiannual basis. Such tests shall be conducted in conformance with the requirements of 40 CFR 60.8. Stack tests will need to conform with the Test Methods and Procedures in 40 CFR 60 appendix A, or other EPA-approved (federally enforceable) test methods and procedures.

The EPA is soliciting comments on whether it is feasible or appropriate to require affected units (kilns) to be equipped with CEMS to measure and monitor the NO_x concentration (emissions level) instead of conducting performance tests on semiannual basis.

We are also soliciting comment on whether it is appropriate for the affected units (kilns) to use CPMS instead of CEMS to monitor the NO_x concentration (emissions level). We note that CPMS, also called parametric monitoring, measures a parameter (or multiple parameters) as a key indicator of system performance. The parameter is generally an operational parameter of the process

³¹⁵ 85 FR 68999 (October 30, 2020).

or the air pollution control device (APCD) that is known to affect the emissions levels from the process or the control efficiency of the APCD.

Examples of parametric monitoring include kiln feed rate, clinker production rate, fuel type, fuel flow rate, specific heat consumption, secondary air temperature, kiln feed-end temperature, preheater exhaust gas temperature, induced draught fan pressure drop, kiln feed-end percentage oxygen, percentage downcomer oxygen, primary air flow rate, ammonia feed rate and slippage.

3. Iron and Steel Mills and Ferroalloy Manufacturing

Applicability

The EPA is proposing to establish regulatory requirements for the Iron and Steel Mills and Ferroalloy Manufacturing source category that apply to emissions units that directly emit or have the potential to emit 100 tpy or more of NO_x and to facilities containing two or more such units that collectively emit or have the potential to emit 100 tpy or more of NO_x. The EPA is setting emissions limits based on type of unit to ensure that the necessary emissions reductions occur across all units of the same type. The EPA is seeking comment on whether it should

set an applicability threshold based on a unit's production capacity rather than an emissions threshold.

Emissions Limitations and Rationale

In developing the emissions limits for the Iron and Steel and Ferroalloy Manufacturing industry, the EPA reviewed RACT NO_x rules, NESHAP rules, air permits and related emissions tests, technical support documents, and consent decrees. These rules and source-specific requirements most commonly express the emissions limits for this industry in terms of mass of pollutant emitted (pounds) per operating hour (hours) (*i.e.*, pounds of NO_x emitted per production hour), pounds per energy unit (*i.e.*, million British thermal unit (mmBtu)), or pounds of NO_x per ton of steel produced. A regulated entity routinely monitors and keeps track of its production in terms of tons of steel produced per hour (heat rate) as it pertains to the facility's rate of iron and steel production. Depending on the type of unit and industry practice, the EPA is proposing rate-based emissions limits in the form of lb/mmBtu, production-based limits in the form of lb/ton, and work practice standards.

In determining the averaging times for the limits, EPA initially reviewed the NESHAP for Iron and Steel Foundries

codified at 40 CFR part 63 subpart EEEEE, the NESHAP for Integrated Iron and Steel manufacturing facilities codified at 40 CFR part 63 subpart FFFFF, the NESHAP for Ferroalloys Production: Ferromanganese and Silicomanganese codified at 40 CFR part 63 subpart XXX, and the NESHAP for Ferroalloys Production Facilities codified at 40 CFR part 63 subpart YYYYYY. EPA also reviewed various RACT NO_x rules from states located within the OTR, several of which have chosen to implement OTC model rules and recommendations. Based on this information, the EPA is proposing to require a 30-operating day rolling average period as the averaging time frame for this particular industry. The EPA finds that a 30-operating day rolling average period provides a reasonable balance between short term (hourly or daily) and long term (annual) averaging periods, while being flexible and responsive to fluctuations in operations and production.

Based on the available information for this industry, applicable federal and state rules, and active air permits or enforceable orders issued to affected facilities in the iron and steel and ferroalloy manufacturing industry, the EPA proposes the following emissions limits:

TABLE VII.C-3—SUMMARY OF PROPOSED NO_x EMISSIONS LIMITS FOR IRON AND STEEL AND FERROALLOY EMISSIONS UNITS

Emissions unit	Proposed NO _x emissions standard or requirement (lbs/hour or lb/mmBtu)	Additional information
Blast Furnace	0.03 lb/mmBtu	OH NO _x RACT rules limit NO _x emissions from blast furnaces to 0.06 lb/mmBtu without requiring specific control technology. Control NO _x at stoves (typically 3 or 4 per blast furnace), assuming 40–50% reduction) by burner replacement plus SCR.
Basic Oxygen Furnace	0.07 lb/ton	Potential 25–50% reduction by SCR/SNCR from 0.14 lb/ton based on emissions testing.
Electric Arc Furnace	0.15 lb/ton steel	Example permit limits at around 0.2 lb/ton. Assumes 25% reduction by SCR to achieve 0.15 lb/ton steel.
Ladle/tundish Preheaters	0.06 lb/mmBtu	Nucor Kankakee BACT permit limit issued January 2021 is 0.1 lb/mmBtu, 2021. Assume 40% reduction by SCR.
Reheat furnace	0.05 lb/mmBtu	Sterling Steel permit, issued 2019: Low-NO _x natural gas fired burners designed to emit no more than 0.073 lb NO _x /mmBtu, Ohio RACT limit is 0.09 lb/mmBtu. Assume 40% reduction by SCR.
Annealing Furnace	0.06 lb/mmBtu	Big River Steel (AR) 2018 limit and Benteler Steel (LA) 2019 limit (0.11 lb/mmBtu), 85 mmBtu/hr and 13 mmBtu/hr, respectively. Lowest was 0.0915 lb/mmBtu, Nucor AR. Assume 40% reduction by SCR.
Vacuum Degasser	0.03 lb/mmBtu	0.05 lb/mmBtu Nucor Darlington (SC) and Nucor Tuscaloosa (AL). Assume 40% reduction by SCR.
Ladle Metallurgy Furnace	0.1 lb/ton	Assume 40% reduction by SCR.
Taconite Production Kilns	Work practice standard to install and operate low NO _x burners.	Consistent with requirements in Minnesota Taconite FIP <i>See 81 FR 21671</i> .
Coke Ovens (charging)	0.15 lb/ton of coal charged	Assume 50% reduction staged combustion and/or limited use SCR/SNCR during charging operations from AP-42 0.3 lb/ton emission factor.
Coke Ovens (pushing)	0.015 lb/ton of coal pushed	SunCoke Middletown limit is 0.02 lb/ton of coal. Assume 25% reduction by SCR.
Boilers—Coal	0.20 lb/mmBtu	See explanation in Section VII.C.5.
Boilers—Residual oil	0.20 lb/mmBtu	See explanation in Section VII.C.5.
Boilers—Distillate oil	0.12 lb/mmBtu	See explanation in Section VII.C.5.

TABLE VII.C-3—SUMMARY OF PROPOSED NO_x EMISSIONS LIMITS FOR IRON AND STEEL AND FERROALLOY EMISSIONS UNITS—Continued

Emissions unit	Proposed NO _x emissions standard or requirement (lbs/hour or lb/mmBtu)	Additional information
Boilers—Natural gas	0.08 lb/mmBtu	See explanation in Section VII.C.5.

Due to the many types of units within Iron and Steel Mills and Ferroalloy Manufacturing facilities that are not currently subject to NO_x limitations of the stringency necessary to eliminate significant contribution, most of the emissions limits in this proposed rule are based on examples of permitted emissions and estimated reduction potential from the identified control technology. Based on the selection of SCR, SNCR, and burner replacement in the non-EGU screening assessment, the EPA assumed reductions of 20 to 50 percent from current permitted limits and emissions tests depending on the type of unit and controls being implemented.

In addition, for Taconite Production Kilns, the EPA does not currently have the data to determine appropriate emissions limits that these units could achieve by installing low NO_x burners. Therefore, the EPA is proposing to require the installation of low NO_x burners for Taconite Production Kilns and work practice standards for operating these control technologies to achieve emissions reductions. The EPA is also proposing to require these sources to perform performance tests and establish a unit-specific emissions limit at that time. These work practice standards are consistent with EPA’s Taconite FIP for Minnesota. See 81 FR 21671 (April 12, 2016). Due to the ongoing nature of this FIP, the EPA is proposing to require installation of specific control technologies and a period of evaluation before setting a numerical emissions limit.

Compliance Assurance Requirements

The EPA is proposing to require each owner or operator of an affected facility that is subject to the NO_x emissions limit for Iron and Steel Mills and Ferroalloy Manufacturing emissions units contained in this section to install, calibrate, maintain, and operate a CEMS for the measurement of NO_x emissions discharged into the atmosphere from the affected facility. The EPA is proposing that each emissions unit will be required to conduct an initial performance test and to operate CEMS to assure compliance. In conducting the performance tests to demonstrate compliance, sources must use test

methods and procedures in 40 CFR 60 appendix A, Method 7E, or other EPA-approved (federally enforceable) test methods and procedures. The EPA is also soliciting comments on alternative monitoring systems or methods that are equivalent to CEMS to demonstrate compliance with the emissions limits.

4. Glass and Glass Product Manufacturing

Applicability

The EPA is proposing to establish regulatory requirements for the Glass and Glass Product Manufacturing source category that apply to emissions units that directly emit or have the potential to emit 100 tpy or more of NO_x. The EPA is setting emissions limits based on type of unit to ensure that the necessary emissions reductions occur. The EPA is seeking comment on whether it should set an applicability threshold based on a unit’s production capacity rather than an emissions threshold.

Emissions Limitations and Rationale

In developing the emissions limits for the Glass and Glass Product Manufacturing industry, the EPA reviewed RACT NO_x rules, air permits, Alternative Control Techniques (ACT), and consent decrees. These rules and source-specific requirements most commonly express the emissions limits for this industry in terms of mass of pollutant emitted (pounds) per weight of glass removed from the furnace (tons), i.e., pounds of NO_x emitted per ton of glass produced. A regulated entity routinely monitors and keeps track of its glass outputs as it pertains to a furnace’s design capacity and the plant’s production. Therefore, the EPA believes that this form of NO_x emissions limit is effective, practicable, and convenient to record and report to an air agency.

In determining the averaging time for the limits, the EPA initially reviewed the NSPS for glass manufacturing plants codified at 40 CFR part 60 subpart CC. This NSPS applied to any glass melting furnace in an affected facility that commenced construction or modification after June 15, 1979, and produced more than 5 tons of glass per day. It was noted that the NSPS only provides standards for particulate matter and does not provide standards

or averaging times for NO_x. In order to determine the averaging time for the NO_x emissions limits, the EPA reviewed various RACT NO_x rules from states located within the OTR, several of which have chosen to implement OTC model rules and recommendations.

Most of the states within the OTR implement RACT regulations for the glass manufacturing industry that do not specify presumptive NO_x limits.³¹⁶ With respect to those RACT rules in the OTR states that contain presumptive RACT NO_x limits for glass manufacturing furnaces, EPA found variations in averaging times, ranging from a 30-day rolling average to a more stringent daily average.³¹⁷ The EPA also reviewed RACT NO_x regulations for the glass manufacturing industry outside the OTR and observed that 30-day rolling averages and daily averages varied throughout the states.³¹⁸ The EPA is proposing to require owners or operators of glass manufacturing furnaces to comply with the applicable presumptive NO_x emissions limits on a 30-day rolling average time frame. This averaging time frame is consistent with other statewide RACT NO_x regulations for this particular industry. Furthermore, a state’s air agency may choose to require an averaging period shorter than a 30-operating day rolling

³¹⁶ RACT NO_x rules of the following OTR states CT, DC, DE, MD, ME, NH, NY, RI, VA, and VT do not provide presumptive NO_x limits for glass manufacturing sources. These RACT regulations require owners or operators to submit RACT case-by-case analysis.

³¹⁷ Pennsylvania’s presumptive RACT NO_x emissions limits are based on 30-day rolling average. New Jersey’s and Massachusetts’ rules contain more stringent daily averages. Maryland’s RACT rule, section 26.11.09.08.I, requires owner or operators to optimize combustion by performing daily oxygen tests and maintain excess oxygen at 4.5% or less. See <http://www.dsd.state.md.us/comar/comarhtml/26/26.11.09.08.htm>.

³¹⁸ For example, presumptive RACT NO_x emissions limits in California are based on both 30-day rolling and daily averages (see <https://www.valleyair.org/rules/currnrules/R4354%20051911.pdf>). Wisconsin’s NO_x emissions limits are based on a 30-day rolling average (see <https://casetext.com/regulation/wisconsin-administrative-code/agency-department-of-natural-resources/environmental-protection-air-pollution-control/chapter-nr-428-control-of-nitrogen-compound-emissions/subchapter-iv-nox-reasonably-available-control-technology-requirements/section-nr-42822-emission-limitation-requirements>).

average in air permits or RACT regulations for these plants. The EPA finds that a 30-operating day rolling average period provides a reasonable balance between short term (hourly or

daily) and long term (annual) averaging periods, while being flexible and responsive to fluctuations in operation and production.

Based on the available information for this industry, applicable state and local

air agency rules, and active air permits or enforceable orders issued to affected glass manufacturing plants, EPA is proposing the following emissions limits for glass manufacturing furnaces:

TABLE VII.C-4—SUMMARY OF PROPOSED NO_x EMISSIONS LIMITS FOR FURNACE UNIT TYPES IN GLASS AND GLASS PRODUCT MANUFACTURING

Furnace type	Proposed NO _x emissions limit (lb/ton of glass produced)	Additional information
Container Glass Manufacturing Furnace.	4.0	Limits reviewed ranged between 1–4; one state rule allowed as high as 5; with addition of post combustion NO _x controls, the upper range could be reduced significantly; consistent with 25 Pennsylvania Code 129.304(a)(1) and New Jersey Administrative Code 7:27 Subchapter 19.1.
Pressed/Blown Glass Manufacturing Furnace or Fiberglass Manufacturing Furnace.	4.0	Limits reviewed ranged between 1.36–4; one state rule allowed as high as 7; with addition of post combustion control the limit could be reduced significantly; limit of 4.0 is consistent with RACT regulations for states located within OTR.
Flat Glass Manufacturing Furnace.	9.2	Limits reviewed ranged between 5–9.2; with the addition of post combustion controls the limit could be reduced significantly; consistent with San Joaquin Valley Air Pollution Control District Rule 4354 5.1.1 and New Jersey Administrative Code 7:27 Subchapter 19.1.

The EPA is soliciting comment on whether it is feasible or appropriate to phase out and retire existing glass manufacturing furnaces in the affected states and replace them with more energy efficient and less emitting units like all-electric melter installations. The EPA is also requesting comment on the time needed to complete such a task. All-electric melters are glass melting furnaces in which all the heat required for melting is provided by electric current from electrodes submerged in the molten glass.³¹⁹ All-electric melter furnaces could provide an energy efficient and NO_x emission-free alternative to current methods of melting and producing glass.

According to the EPA's "Alternative Control Techniques Document—NO_x Emissions from Glass Manufacturing,"³²⁰ glass manufacturing furnaces may utilize combustion modifications equivalent to low-NO_x burners and oxy-firing. The EPA is soliciting comment on whether it is feasible or appropriate to require sources with existing glass

manufacturing furnaces in affected states that currently utilize these combustion modifications to add and operate a post-combustion control device like SNCR and SCR to further improve their NO_x removal efficiency. The EPA is also requesting comments on the time needed to install such controls.

Compliance Assurance Requirements

The EPA is proposing to require each owner or operator of an affected facility that is subject to the NO_x emissions standards for glass manufacturing furnaces contained in this section to install, calibrate, maintain, and operate a CEMS for the measurement of NO_x emissions discharged into the atmosphere from the affected facility. The EPA is also soliciting comments on alternative monitoring systems or methods that are equivalent to CEMS to demonstrate compliance with the emissions limits. In conducting the performance tests to demonstrate compliance, sources must use test methods and procedures in 40 CFR part 60 appendix A, method 7E, or other

EPA-approved (federally enforceable) methods and procedures. Owners or operators must calculate and record the 30-operating day rolling emissions rate of NO_x as the total of all hourly emissions data for a glass manufacturing furnace in the preceding 30 days, divided by the total tons of glass produced in that furnace during the same 30-operating day period. Owners or operators of glass manufacturing furnaces installed with continuous emissions monitoring may demonstrate compliance with the emissions limit as follows: (1) Determine the average pounds of NO_x emitted per day, (2) determine the tons of glass removed per day during the same day, (3) divide the average pounds of NO_x emitted per day by the tons of glass removed per day as determined in step (2), and (4) compare the quotient to the emissions limits prescribed in the Section VII of this proposed rule. If the pollutant mass emissions rate is in lb/hr, the following equation³²¹ shall be used to convert the emissions rate to lb pollutant/ton of glass pulled:

$$\text{lb emitted / ton of glass pulled} = \frac{\frac{\text{lb emitted}}{\text{hr}}}{\text{Pull rate in } \frac{\text{tons}}{\text{hr}}}$$

³¹⁹ See definitions in 40 CFR part 60 subpart CC.

³²⁰ "Alternative Control Techniques Document—NO_x Emissions from Glass Manufacturing," EPA-453/R-94-037, June 1994.

³²¹ This equation is provided in the San Joaquin Valley Unified Air Pollution Control District's Rule 4354, section 8.1.

5. Boilers From Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills

Applicability

The EPA is proposing to establish regulatory requirements for the Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills industries that apply to boilers within these facilities that have a design capacity of 100 mmBtu/hr or greater. These requirements are consistent with EPA's findings at Step 3 with respect to Tier 2 non-EGU industries. As noted below, we do not believe boilers meeting this size classification exist within the other Tier 2, or Tier 1 industries, but if they do, the EPA proposes that they would also be subject to the requirements of this part. Based on our review of the potential emissions from industrial boilers of various fuel types, we find that use of a boiler design capacity of 100 mmBtu/hr reasonably approximates the selection of 100 tpy used within the Non-EGU Screening Assessment memorandum. Therefore, boilers subject to the requirements of this section of the proposed rule are those found within any of the 23 covered states with non-EGU emissions reduction obligations that are within a Tier 1 or Tier 2 industry and have a design capacity of 100 mmBTU/hr or greater. The EPA is

seeking comment on whether EPA should alternatively set an applicability threshold based on potential to emit.

Emissions Limitations and Rationale

This section of the proposed rule applies to certain boilers located at any facility identified as a Tier 2 industry within the non-EGU screening assessment. As described within the Non-EGU Screening Assessment memorandum, the EPA reviewed the projected 2026 emissions data to identify large boilers within the Tier 2 industries, defined as boilers projected to emit more than 100 tons per year in 2026. Boilers meeting this threshold were found in three of the five Tier 2 industries, as identified in Table VII.C.5-1.

TABLE VII.C.5-1—TIER 2 INDUSTRIES WITH LARGE BOILERS AND ASSOCIATED NAICS CODES

Industry	NAICS code
Basic Chemical Manufacturing	3251xx
Petroleum and Coal Products Manufacturing	3241xx
Pulp, Paper, and Paperboard Mills ..	3221xx

The EPA did not find large boilers within the Lime and Gypsum Product Manufacturing (NAICS code 3274xx) or the Metal Ore Mining industries (NAICS

code 2122xx). As such the EPA is not expressly proposing to include boilers in those industries. However, if as a result of receiving additional information during the comment period the EPA identifies large boilers within these two industries that meet the applicability criteria described below, those boilers could be subject to the requirements of the final rule.

As described within the Non-EGU Sectors TSD, the RACT rules we reviewed containing NO_x limits for industrial boilers relied primarily on design capacity in mmBtu/hr as the metric for selecting design criteria. The EPA is proposing to use that same metric to establish control requirements for boilers with a design capacity of 100 mmBtu/hr or greater. As noted within the Non-EGU Sectors TSD, boilers rated at 100 mmBtu/hr or greater can emit large amounts of NO_x, particularly if they do not operate NO_x control equipment.

The EPA reviewed NO_x emissions limits for industrial boilers with design capacities of 100 mmBtu/hr or greater that have been adopted by states and incorporated into their SIPs. The Non-EGU Sectors TSD contains a detailed discussion of that evaluation. Based on our review, we propose to establish the following NO_x emissions limits for coal, oil, and gas fired industrial boilers located at a Tier 2 industry:

TABLE VII.C.5-2—PROPOSED NO_x EMISSIONS LIMITS FOR INDUSTRIAL BOILERS >100 MMBTU/HR

Unit type	Emissions limit (lbs NO _x /mmBtu)	Additional information
Coal	0.20	Limits reviewed ranged from 0.08 to 1.0. Proposed limit will likely require a combination of combustion controls or post-combustion controls.
Residual oil	0.20	Limits reviewed ranged from 0.15 to 0.50. Proposed limit will likely require combustion controls.
Distillate oil	0.12	Limits reviewed ranged from 0.10 to 0.43. Proposed limit will likely require combustion controls.
Natural gas	0.08	Limits reviewed ranged from 0.06 to 0.25. Proposed limit will likely require a combination of combustion controls or post-combustion controls.

Additional information on the EPA's derivation of these proposed emissions rates for boilers is provided below and in the Non-EGU Sectors TSD.

The EPA notes that some coal, oil, and gas-fired industrial boilers may have already installed combustion or post-combustion control equipment, such as SCR or SNCR, sufficient to meet the emission limits established in this FIP. Some of the boilers covered by this FIP might have install controls to meet the emission limits contained within EPA's NSPS located at 40 CFR 60 Subpart Db, which requires that some fossil fuel-fired units that commenced construction, modification, or reconstruction after June 19, 1984, meet

various NO_x emission limits based on factors such as unit type or heat rate. Additionally, industrial boilers located in ozone nonattainment areas or within the ozone transport region may have installed controls to meet emission limits adopted by states to meet NO_x RACT requirements.

a. Coal-Fired Industrial Boilers

Coal-fired industrial boilers subject to the proposed requirements of this section would have to meet a NO_x emissions limit of 0.2 lbs/mmBtu on a 30-day rolling average basis.

Various forms of combustion and post-combustion NO_x control technology exist that should enable

most facilities to be retrofit with equipment that will enable them to meet these emissions limits. Additionally, as noted in the Non-EGU Sectors TSD, many states containing ozone nonattainment areas or located within the OTR have already adopted emissions limits similar to or more stringent than the limits the EPA proposes here. Furthermore, some coal-fired industrial boilers may have installed combustion or post-combustion control equipment to meet the emissions limits contained within EPA's NSPS located at 40 CFR part 60 subpart Db, which requires that coal-fired industrial boilers meet a NO_x emissions limit of between 0.5 and 0.8

lbs/mmBtu depending on unit type.³²² Enhancements to or retrofit of additional NO_x control technology should enable most sources to meet the proposed NO_x limit.

There are two main types of NO_x control technology that we believe can be retrofit to most existing industrial boilers, or incorporated into the design of new boilers, to meet our proposed emissions limits. These two control types are combustion controls and post-combustion controls, and in some instances both types are used together. As noted in the EPA's "Alternative Control Techniques Document—NO_x Emissions from Industrial/Commercial/Institutional (ICI) Boilers" (hereafter "ICI Boiler ACT"),³²³ the type of NO_x control available for use on a particular unit depends primarily on the type of boiler, fuel type, and fuel-firing configuration. For example, Table 2–3 of the ICI Boiler ACT indicates which types of combustion and post-combustion NO_x controls are suitable to various types of coal-fired ICI boilers. We note that one type of combustion control, staged combustion air, and one type of post-combustion control, SNCR, are indicated as being compatible with all coal-fired unit types. Additional resources are available that document the availability of NO_x control equipment for industrial boilers.³²⁴

b. Oil-Fired Industrial Boilers

Most oil-fired boilers are fueled by either residual (heavy) oil or distillate (light) oil. The proposed NO_x emissions limit for residual oil-fired boilers subject to the requirements of this section is 0.2 lbs/mmBtu, and the proposed emissions limit for distillate oil-fired boilers is 0.12 lbs/mmBtu. The proposed averaging time for these emissions limits is a 30-day rolling average. As with coal-fired industrial boilers, a number of combustion and post-combustion NO_x control technologies exist that should enable most facilities to meet these emissions limits, and the Non-EGU Sectors TSD identifies numerous states that have already adopted emissions limits similar to the limits EPA proposes here. Table 2–3 of

the ICI Boiler ACT indicates that two types of NO_x combustion control, low-NO_x burners and flue gas recirculation, are commonly found on oil-fueled industrial boilers, and that SNCR, a post-combustion control technology, is suitable to most oil-fueled industrial boilers other than those of the packaged firetube design. Some oil-fired industrial boilers may have already installed combustion or post-combustion control equipment to meet the emissions limits contained within EPA's NSPS at 40 CFR part 60 subpart Db, which requires that distillate oil-fired units meet a NO_x emissions limit of between 0.1 to 0.2 lbs/mmBtu depending on heat release rate, and that residual oil-fired units meet a NO_x emissions limit of between 0.3 to 0.4 lbs/mmBtu also depending on heat release rate.³²⁵ The additional resources noted in the paragraph above discussing coal-fired industrial boilers also contain useful information regarding effective NO_x control equipment for residual and distillate fueled industrial boilers.

c. Gas-Fired Industrial Boilers

The proposed NO_x emissions limit for gas-fired boilers subject to the requirements of this section is 0.08 lbs/mmBtu. The proposed averaging time for these emissions limits is a 30-day rolling average.

As with fossil-fuel-fired boilers, numerous combustion and post-combustion NO_x control technologies exist that should enable most facilities to meet these emissions limits, and many states have already adopted emissions limits similar to the limits the EPA proposes here. Table 2–3 of the ICI Boiler ACT indicates the same control technologies that are suitable for application to oil-fired boilers are also likely to be effective at controlling NO_x emissions from gas-fired industrial boilers. Some gas-fired industrial boilers may have already installed combustion or post-combustion control equipment to meet the emissions limits contained within EPA's NSPS at 40 CFR 60 Subpart Db, which requires that gas-fired units meet a NO_x emissions limit of between 0.1 to 0.2 lbs/MMBtu depending on heat release rate. The additional resources noted in the discussion of coal-fired industrial boilers also contain useful information regarding effective NO_x control equipment for gas-fired industrial boilers.

The EPA anticipates that the majority of boilers covered by this section of the FIP will combust one of the fuels for which we have proposed emissions

limits. However, we request comment on whether emissions limits for other types of fuels should be included in a final FIP, and if so, the types of fuels and the emissions limits that boilers powered by these fuels should be required to meet. Additionally, the EPA seeks comment on whether the EPA should establish less stringent emissions rates for boilers with low utilization rates, and if so, the appropriate emissions rate(s) and corresponding boiler utilization rate(s). The EPA also seeks comment on whether a different averaging time other than the 30-day averaging time proposed for boilers would be more appropriate and requests information supporting any suggested alternative.

Compliance Assurance Requirements

Given the similarities in the types of units covered, the EPA proposes that boilers subject to the requirements of this section demonstrate compliance in a manner similar to the emissions monitoring requirements found in section 60.45 of the NSPS for industrial, commercial, and institutional (ICI) boilers at 40 CFR part 60 subpart D. Those requirements include, among other provisions, the performance of an initial compliance test, installation of a CEMS unless the initial performance test indicates the unit's emissions rate is 70 percent or less of the required emissions rate, and an annual stack test for units not required to install a CEMS.

D. Submitting a SIP

A state may submit a SIP at any time to address CAA requirements that are covered by a FIP, and if the EPA approves the SIP it would replace the FIP, in whole or in part, as appropriate.³²⁶ The EPA has established certain specialized provisions for replacing FIPs with SIPs within all the CSAPR trading programs, including the use of so-called "abbreviated SIPs" and "full SIPs," see 40 CFR 52.38(a)(4) and (5) and (b)(4), (5), (8), (9), (11), and (12); 40 CFR 52.39(e), (f), (h), and (i). For a state to remove all FIP provisions through an approved SIP revision, a state would need to address all of the required reductions addressed by the FIP for that state, *i.e.*, reductions achieved through both EGU control and non-EGU control, as applicable to that state. Additionally, tribes in Indian country within the geographic scope of this proposed rule may elect to work with EPA under the Tribal Authority Rule to replace the FIP for areas of Indian country, in whole or in part, with a tribal implementation plan or

³²² 40 CFR 60.44b.

³²³ "Alternative Control Techniques Document—NO_x Emissions from Industrial/Commercial/Institutional (ICI) Boilers," EPA-453/R-94-022, March 1994.

³²⁴ For example, see "Applicability and Feasibility of NO_x, SO₂, and PM Emissions Control Technologies for Industrial, Commercial, and Institutional Boilers," Northeast States for Coordinated Air Use Management, November 2008 (revised January 2009) and "Nitrogen Oxides (NO_x), Why and How They Are Controlled," EPA, Clean Air Technical Center, 456/F-99-006R, November 1999.

³²⁵ 40 CFR 60.44b.

³²⁶ CAA sections 110(c)(1)(B), 110(k)(3).

reasonably severable portions of a tribal implementation plan.

Under the proposed new FIPs for the 25 states whose EGUs would be required to participate in the CSAPR NO_x Ozone Season Group 3 Trading Program with its proposed modifications, “abbreviated” and “full” SIP options continue to be available. An “abbreviated SIP” allows a state to submit a SIP revision that would establish state-determined allowance allocation provisions replacing the default FIP allocation provisions but leaves the remaining FIP provisions in place. A “full SIP” allows a state to adopt a trading program meeting certain requirements that would allow sources in the state to continue to use the EPA-administered trading program through an approved SIP revision, rather than a FIP. In addition, as under past CSAPR rulemakings, the EPA proposes to provide states with an opportunity to adopt state-determined allowance allocations for existing units for the second control period under this rule—in this case, the 2024 control period—through streamlined SIP revisions. *See* 76 FR 48326–48332 for additional discussion of full and abbreviated SIP options; *see also* 40 CFR 52.38(b).

1. SIP Option To Modify Allocations for 2024 Under EGU Trading Program

As with the start of past CSAPR rulemakings, the EPA proposes to allow a state to use a similar process to submit a SIP revision establishing allowance allocations for existing EGU units in the state for the second control period of the new requirements, *i.e.*, in 2024, to replace the EPA-determined default allocations. This proposed process would use updated deadlines, *i.e.*, a state must submit a letter to EPA within 60 days of publication of the final rule indicating its intent to submit a complete SIP revision by September 1, 2023. The SIP would provide in an EPA-prescribed format a list of existing units within the state and their allocations for the 2024 control period. If a state does not submit a letter of intent to submit a SIP revision, the EPA-determined default allocations will be recorded by 90 days of publication of the final rule. If a state submits a timely letter of intent but fails to submit a SIP revision, the EPA-determined default allocations will be recorded by September 15, 2023. If a state submits a timely letter of intent followed by a timely SIP revision that is approved, the approved SIP allocations will be recorded by March 1, 2024.

The EPA requests comment on the proposed option to modify allowance allocations under the Group 3 trading

program for EGUs for the 2024 control period through a SIP revision.

2. SIP Option To Modify Allocations for 2025 and Beyond Under EGU Trading Program

For the 2025 control period and later, the EPA proposes that states in the CSAPR NO_x Ozone Season Group 3 Trading Program can modify the EPA-determined default allocations with an approved SIP revision. For the 2025 control period and later, SIPs can be full or abbreviated SIPs. States will also have the option to expand applicability to include EGUs between 15 MWe and 25 MWe or, in the case of states subject to the NO_x SIP Call, as discussed in Section VII.F.1 of this proposed rule, large non-EGU boilers and combustion turbines. Inclusion of the large non-EGUs would serve as a mechanism to address the state’s outstanding regulatory obligations under the NO_x SIP Call with respect to those sources, and the state would be allowed to allocate a defined quantity of additional Group 3 allowances because of the expanded set of sources. *See* above and 76 FR 48326–48332 for additional discussion of full and abbreviated SIP options; *see also* 40 CFR 52.38(b).

For states that want to modify the EPA-determined default allocations or expand applicability of the EGU trading program, the EPA proposes that a state could submit a SIP revision that makes changes only to one or both of those type of provisions while relying on the FIP for the remaining provisions of the EGU trading program. This abbreviated SIP option allows states to tailor the FIP to their individual choices while maintaining the FIP-based structure of the trading program. In order to ensure the availability of allowance allocations for units in any Indian country within a state not covered by the state’s CAA implementation planning authority, if the state chose to replace EPA’s default allocations with state-determined allocations, the EPA would continue to administer any portion of each state emissions budget reserved as a new unit set-aside or an Indian country existing unit set-aside.

The proposed SIP submittal deadline for this type of revision is December 1, 2023, if the state intends for the SIP revision to be effective beginning with the 2025 control period. For states that submit this type of SIP revision, the EPA proposes that the deadline to submit state-determined allocations beginning with the 2025 control period under an approved SIP would be June 1, 2024, and the deadline for the EPA to record those allocations would be July 1, 2024. Similarly, under the

proposed new deadlines a state could submit a SIP revision beginning with the 2026 control period and beyond by December 1, 2024, with state allocations for the 2026 control period due June 1, 2025, and the EPA recordation of the allocations by July 1, 2025.

The EPA requests comment on the proposed option to replace certain allowance allocation or applicability provisions under the Group 3 trading program for EGUs for control periods in 2025 and later years through a SIP revision.

3. SIP Option To Replace the Federal EGU Trading Program With an Integrated State EGU Trading Program

For the 2025 control period and later, the EPA proposes that states in the CSAPR NO_x Ozone Season Group 3 Trading Program can choose to replace the Federal EGU trading program with an integrated State EGU trading program through an approved SIP revision. Under this option, a state would submit a SIP revision that makes changes only to modify the EPA-determined default allocations or expand applicability of the EGU trading program and adopt identical provisions for the remaining portions of the EGU trading program. This SIP option allows states to replace these FIP provisions with state-based SIP provisions while continuing participation in the larger regional trading program. As with the abbreviated SIP option discussed above, in order to ensure the availability of allowance allocations for units in any Indian country within a state not covered by the state’s CAA implementation planning authority, if the state chose to replace EPA’s default allocations with state-determined allocations, EPA would continue to administer any portion of each state emissions budget reserved as a new unit set-aside or an Indian country existing unit set-aside.

Proposed deadlines for this type of SIP revision are the same as the deadlines for abbreviated SIP revisions. For the SIP-based program to start with the 2025 control period, the SIP deadline would be December 1, 2023, the deadline to submit state-determined allocations for the 2025 control period under an approved SIP would be June 1, 2024, and the deadline for the EPA to record those allocations would be July 1, 2024, and so on.

The EPA requests comment on the proposed option to replace the federal trading program for EGUs with an integrated state trading program for EGUs for control periods in 2025 and later years through a SIP revision.

4. SIP Revisions That Do Not Use the New Trading Program

States can submit SIP revisions to replace the FIP that achieve the necessary EGU emissions reductions but do not use the CSAPR NO_x Ozone Season Group 3 Trading Program. For a transport SIP revision that does not use the CSAPR NO_x Ozone Season Group 3 Trading Program, the EPA would evaluate the transport SIP based on the particular control strategies selected and whether the strategies as a whole provide adequate and enforceable provisions ensuring that the necessary emissions reductions (*i.e.*, reductions equal to or greater than what the Group 3 trading program will achieve) will be achieved. In order to address the applicable CAA requirements, the SIP revision should include the following general elements: (1) A comprehensive baseline 2023 statewide NO_x emissions inventory (which includes existing control requirements), which should be consistent with the 2023 emissions inventory that the EPA used to calculate the required state budget in this final proposed rule (unless the state can explain the discrepancy); (2) a list and description of control measures to satisfy the state emissions reduction obligation and a demonstration showing when each measure would be implemented to meet the 2023 and successive control periods; (3) fully-adopted state rules providing for such NO_x controls during the ozone season; (4) for EGUs greater than 25 MWe, monitoring and reporting under 40 CFR part 75, and for other units, monitoring and reporting procedures sufficient to demonstrate that sources are complying with the SIP (*see* 40 CFR part 51 subpart K (“source surveillance” requirements)); and (5) a projected inventory demonstrating that state measures along with federal measures will achieve the necessary emissions reductions in time to meet the 2023 and successive compliance deadlines (*e.g.*, enforceable reductions commensurate with installation of SCR on coal-fired EGUs by the 2026 ozone season). The SIPs must meet procedural requirements under the Act, such as the requirements for public hearing, be adopted by the appropriate state board or authority, and establish by a practically enforceable regulation or permit(s) a schedule and date for each affected source or source category to achieve compliance. Once the state has made a SIP submission, the EPA will evaluate the submission(s) for completeness before acting on the SIP. EPA’s criteria for determining completeness of a SIP submission are codified at 40 CFR part 51 appendix V.

For further information on replacing a FIP with a SIP, *see* the discussion in the final CSAPR rulemaking (76 FR 48326).

5. SIP Revision Requirements for Non-EGU Emissions Limits

EPA’s promulgation of a non-EGU transport FIP would in no way affect the ability of states to submit, for review and approval, a SIP that replaces the requirements of the FIP with state requirements. In order to replace the non-EGU portion of the FIP in a state, the state’s SIP must provide adequate provisions to prohibit an equivalent or greater amount of NO_x emissions that contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. The non-EGU requirements of the FIP would remain in place in each covered state until a state’s SIP has been approved by the EPA to replace the FIP.

After promulgation of the final FIP, the EPA anticipates that the most straightforward method for a state to submit a SIP revision to replace the non-EGU portion of the FIP for the state would be to provide a SIP that includes emissions limits at an equivalent or greater level of stringency than is specified for non-EGU sources meeting the applicability criteria and associated compliance assurance provisions for each of the unit types identified in Section VII.C of this proposed rule.

The EPA seeks comment on other potential methods by which states could develop a SIP to obtain emissions reductions from non-EGU sources that would replace the state’s non-EGU portion of the FIP. The EPA recognizes that states may select emissions reductions strategies that differ from the emissions limitations included in the proposed non-EGU FIP. But the state must still demonstrate that the replacement SIP provides an equivalent or greater amount of emissions reductions as the proposed FIP. The EPA anticipates that such emissions reductions strategies would have to achieve reductions beyond those emissions reductions already projected to occur in EPA’s emissions projections and air quality modeling conducted at Steps 1 and 2. Such reductions must also be achieved on the same timeframe as the reductions that would be required in a final FIP. A demonstration of equivalency using other control strategies is complicated by the fact that the proposed emissions limits for non-EGU sources are generally rate-based and expressed in a variety of forms; this will make comparative analysis to determine equivalency challenging.

In all cases, a SIP submitted by a state to replace the non-EGU FIPs would need to rely on permanent and practically enforceable controls measures that are included in the SIP and, once approved by the EPA, rendered federally enforceable. So-called “demonstration-only” or “non-regulatory” SIPs would be insufficient. Further, the EPA anticipates that states would bear the burden of establishing that the state’s alternative approach achieves at least an equivalent level of emissions reduction as the FIP, and (unless merely adopting directly the control requirements of the FIP) the state would need to provide a Step 3 multifactor analysis that the state’s SIP eliminates significant contribution.

E. Title V Permitting

This proposed rule, like CSAPR, the CSAPR Update, and the Revised CSAPR Update does not establish any permitting requirements independent of those under Title V of the CAA and the regulations implementing Title V, 40 CFR parts 70 and 71.³²⁷ All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emissions limitations and other conditions as necessary to ensure compliance with the applicable requirements of the CAA, including the requirements of the applicable SIP. CAA sections 502(a) and 504(a), 42 U.S.C. 7661a(a) and 7661c(a). The “applicable requirements” that must be addressed in title V permits are defined in the title V regulations (40 CFR 70.2 and 71.2 (definition of “applicable requirement”).

The EPA anticipates that, given the nature of the units subject to this proposed rule, most if not all of the sources at which the units are located are already subject to title V permitting requirements. For sources subject to title V, the interstate transport requirements for the 2015 ozone NAAQS that are applicable to them under the new or amended FIPs would be “applicable requirements” under title V and therefore must be addressed in the title V permits. For example, requirements concerning designated representatives, monitoring, reporting, and recordkeeping, the requirement to hold allowances covering emissions, the compliance assurance provisions, and liability are “applicable requirements” that must be addressed in the permits.

Title V of the CAA establishes the basic requirements for state title V

³²⁷ Part 70 addresses requirements for state title V programs, and Part 71 governs the federal title V program.

permitting programs, including, among other things, provisions governing permit applications, permit content, and permit revisions that address applicable requirements under final FIPs in a manner that provides the flexibility necessary to implement market-based programs such as the trading programs established in CSAPR, the CSAPR Update, the Revised CSAPR Update and this proposed rule. 42 U.S.C. 7661a(b); 40 CFR 70.6(a)(8) & (10); 40 CFR 71.6(a)(8) & (10).

In CSAPR, the CSAPR Update and the Revised CSAPR Update, the EPA established standard requirements governing how sources covered by that rule would comply with title V and its regulations.³²⁸ 40 CFR 97.506(d), 97.806(d) and 97.1006(d). For any new or existing sources subject to this proposed rule, identical title V compliance provisions would apply, just as they would have in the CSAPR NO_x Ozone Season Group 3 Trading Program. For example, the title V regulations provide that a permit issued under title V must include “[a] provision stating that no permit revision shall be required under any approved . . . emissions trading and other similar programs or processes for changes that are provided for in the permit.” 40 CFR 70.6(a)(8) and 71.6(a)(8). Consistent with these provisions in the title V regulations, in CSAPR, the CSAPR Update and the Revised CSAPR Update, the EPA included a provision stating that no permit revision is necessary for the allocation, holding, deduction, or transfer of allowances. 40 CFR 97.506(d)(1), 97.806(d)(1) and 97.1006(d)(1). This provision is also included in each title V permit for an affected source. This proposed rule maintains the approach taken under CSAPR, the CSAPR Update and the Revised CSAPR Update that allows allowances to be traded (or allocated, held, or deducted) without a revision to the title V permit of any of the sources involved.

Similarly, this proposed rule would also continue to support the means by which a source in the proposed trading program can use the title V minor modification procedure to change its

approach for monitoring and reporting emissions, in certain circumstances. Specifically, sources may use the minor modification procedure so long as the new monitoring and reporting approach is one of the prior-approved approaches under CSAPR, the CSAPR Update and the Revised CSAPR Update (*i.e.*, approaches using a continuous emissions monitoring system under subparts B and H of part 75, an excepted monitoring system under appendices D and E to part 75, a low mass emissions excepted monitoring methodology under 40 CFR 75.19, or an alternative monitoring system under subpart E of part 75), and the permit already includes a description of the new monitoring and reporting approach to be used. *See* 40 CFR 97.506(d)(2), 97.806(d)(2) and 97.1006(d)(2); 40 CFR 70.7(e)(2)(i)(B) and 40 CFR 71.7(e)(1)(i)(B). As described in EPA’s 2015 Title V Guidance, sources may comply with this requirement by including a table of all of the approved monitoring and reporting approaches under CSAPR, the CSAPR Update and the Revised CSAPR Update trading programs in which the source is required to participate, and the applicable requirements governing each of those approaches.³²⁹ Inclusion of such a table in a source’s title V permit therefore allows a covered unit that seeks to change or add to its chosen monitoring and recordkeeping approach to easily comply with the regulations governing the use of the title V minor modification procedure.

Under CSAPR, the CSAPR Update and the Revised CSAPR Update, in order to employ a monitoring or reporting approach different from the prior-approved approaches discussed previously, unit owners and operators must submit monitoring system certification applications to the EPA establishing the monitoring and reporting approach actually to be used by the unit, or, if the owners and operators choose to employ an alternative monitoring system, to submit petitions for that alternative to the EPA. These applications and petitions are subject to the EPA review and approval to ensure consistency in monitoring and reporting among all trading program participants. EPA’s responses to any petitions for alternative monitoring systems or for alternatives to specific monitoring or reporting requirements are posted on EPA’s website.³³⁰ The

EPA maintains the same approach in this proposed rule.

Consistent with EPA’s approach under CSAPR, the CSAPR Update and the Revised CSAPR Update, the applicable requirements resulting from the new and amended FIPs generally will have to be incorporated into affected sources’ existing title V permits either pursuant to the provisions for reopening for cause (40 CFR 70.7(f) and 71.7(f)) or the standard permit renewal provisions (40 CFR 70.7(c) and 71.7(c)).³³¹ For sources newly subject to title V that are affected sources under the FIPs, the initial title V permit issued pursuant to 40 CFR 70.7(a) should address the final FIP requirements.

As was the case in the CSAPR, the CSAPR Update and the Revised CSAPR Update, the new and amended FIPs impose no independent permitting requirements and the title V permitting process will impose no additional burden on sources already required to be permitted under title V.

F. Relationship to Other Emissions Trading and Ozone Transport Programs

1. NO_x SIP Call

States affected by both the NO_x SIP Call for the 1979 ozone NAAQS and any final ozone season requirements established upon finalization of this proposed rule for the 2015 ozone NAAQS will be required to comply with the requirements of both rules. EPA is proposing to require NO_x ozone season emissions reductions from EGUs larger than 25 MWe in many of the NO_x SIP Call states, and at greater stringency than required by the NO_x SIP Call, by requiring the EGUs to participate in the CSAPR NO_x Ozone Season Group 3 Trading Program. Therefore, this proposed rule, if finalized, would satisfy the requirements of the NO_x SIP Call for these large EGUs.

In the Revised CSAPR Update, the EPA finalized the option for any NO_x SIP Call state that was also subject to the Revised CSAPR Update to voluntarily submit a SIP revision to expand the applicability of the Group 3 trading program to include all NO_x Budget Trading Program units, which in addition to large EGUs also include large non-EGU boilers and combustion turbines with a maximum design heat input greater than 250 mmBtu/hr. As part of such a SIP revision, the state

³³¹ A permit is reopened for cause if any new applicable requirements (such as those under a FIP) become applicable to an affected source with a remaining permit term of 3 or more years. If the remaining permit term is less than 3 years, such new applicable requirements will be added to the permit during permit renewal. *See* 40 CFR 70.7(f)(1)(I) and 71.7(f)(1)(I).

³²⁸ The EPA has also issued a guidance document and template that includes instructions for how to incorporate the applicable requirements into a source’s Title V permit. *See* Memorandum dated May 13, 2015, from Anna Marie Wood, Director, Air Quality Policy Division, and Reid P. Harvey, Director, Clean Air Market Division, EPA, to Regional Air Division Directors, Subject: “Title V Permit Guidance and Template for the Cross-State Air Pollution Rule” (“2015 Title V Guidance”), available at https://www.epa.gov/sites/default/files/2016-10/documents/csapr_title_v_permit_guidance.pdf.

³²⁹ *Id.*

³³⁰ <https://www.epa.gov/airmarkets/part-75-petition-responses>.

would be allowed to issue additional emissions allowances capped at a level intended to preserve the stringency of the Group 3 trading program. In today's proposed rule, the EPA is not proposing any changes to this provision of the Group 3 trading program.³³²

2. Acid Rain Program

This proposed rule, if finalized, would not affect any Acid Rain Program requirements. Any Title IV sources that are subject to provisions of this proposed rule would still need to continue to comply with all Acid Rain provisions. Acid Rain Program SO₂ and NO_x requirements are established independently in Title IV of the CAA and will continue to apply independently of this proposed rule's provisions. Acid Rain sources will still be required to comply with Title IV requirements, including the requirement to hold Title IV allowances to cover SO₂ emissions after the end of a compliance year.

3. Other Current Emissions Trading Programs

This proposed rule, if finalized, would not substantively affect any provisions of the CSAPR NO_x Annual, CSAPR SO₂ Group 1, CSAPR SO₂ Group 2, CSAPR NO_x Ozone Season Group 1, or CSAPR NO_x Ozone Season Group 2 trading programs for sources that continue to participate in those programs except with regard to the schedule for EPA to record certain allowance allocations, as discussed in Section VII.B.12 of this proposed rule. In addition, certain revisions are proposed to the CSAPR NO_x Ozone Season Group 2 Trading Program regulations to address the proposed transition of sources in eight states from that program to the CSAPR NO_x Ozone Season Group 3 Trading Program, as discussed in Section VII.B.11 of this proposed rule. Sources that are subject to any of the CSAPR trading programs will still be required to comply with all requirements, including the requirement to hold allowances to cover emissions after the end of a control period.

³³² In the CSAPR Update, the EPA finalized an identical option allowing NO_x SIP Call states to expand applicability of the Group 2 trading program to cover certain non-EGUs. If the geographic expansion of the Group 3 trading program proposed in this rulemaking is finalized as proposed, no NO_x SIP Call states would continue to be covered by the Group 2 trading program. Because the provision allowing NO_x SIP Call states to expand applicability of the Group 2 trading program to include such non-EGUs would therefore be obsolete, the EPA is proposing to remove the provision.

VIII. Environmental Justice Analytical Considerations and Stakeholder Outreach and Engagement

Consistent with EPA's commitment to integrating environmental justice in the agency's actions, and following the directives set forth in multiple Executive Orders, the Agency has analyzed the impacts of this proposed rule on communities with environmental justice concerns and engaged with stakeholders representing these communities to seek input and feedback. Executive Order 12898 is discussed in Section XI.J of this proposed rule and analytical results are available in Chapter 7 of the RIA.

A. Introduction

Executive Order 12898 directs EPA staff to identify the populations of concern who are most likely to experience unequal burdens from environmental harms; specifically, minority populations, low-income populations, and indigenous peoples.³³³ Additionally, Executive Order 13985 is intended to advance racial equity and support underserved communities through federal government actions.³³⁴ The EPA defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."³³⁵ In recognizing that minority and low-income populations often bear an unequal burden of environmental harms and risks, EPA continues to consider ways of protecting them from adverse public health and environmental effects of air pollution.

B. Analytical Considerations

EPA's environmental justice technical guidance³³⁶ states that "[t]he analysis of potential EJ concerns for regulatory actions should address three questions:

1. Are there potential environmental justice concerns associated with environmental stressors affected by the

³³³ 59 FR 7629, February 16, 1994.

³³⁴ 86 FR 7009, January 20, 2021.

³³⁵ <https://www.epa.gov/environmentaljustice>.

³³⁶ U.S. Environmental Protection Agency (EPA), 2015. Guidance on Considering Environmental Justice During the Development of Regulatory Actions.

regulatory action for population groups of concern in the baseline?

2. Are there potential environmental justice concerns associated with environmental stressors affected by the regulatory action for population groups of concern for the regulatory option(s) under consideration?

3. For the regulatory option(s) under consideration, are potential environmental justice concerns created or mitigated compared to the baseline?"

To address these questions in EPA's first quantitative EJ analysis in the context of a transport rule, the EPA developed a unique analytical approach that considers the purpose and specifics of the proposed rulemaking, as well as the nature of known and potential exposures and impacts. However, due to data limitations, it is possible that our analysis failed to identify disparities that may exist, such as potential environmental justice characteristics (e.g., unemployed), environmental impacts (e.g., other ozone metrics), and more granular spatial resolutions (e.g., neighborhood scale) that were not evaluated.

For the proposed rule, we employ two types of analytics to respond to the above three questions: Proximity analyses and exposure analyses. Both types of analyses can inform whether there are potential EJ concerns for population groups of concern in the baseline (question 1).³³⁷ In contrast, only the exposure analyses, which are based on future air quality modeling, can inform whether there will be potential EJ concerns after implementation of the regulatory options under consideration (question 2) and whether potential EJ concerns will be created or mitigated compared to the baseline (question 3). While the exposure analysis can respond to all three questions, it should be noted that exposure is limited to a single ozone metric, the maximum daily 8-hour average, averaged across the April through September warm season (AS-MO3). This ozone metric likely smooths potential daily ozone gradients and is not directly relatable to the National Ambient Air Quality Standard (NAAQS). Additionally, the ozone exposure analytic results are provided in two formats: Aggregated and distributional. The aggregated results provide an overview of potential ozone exposure differences across populations at the national- and state-levels, while the distributional results show detailed

³³⁷ The baseline for proximity analyses is current population information (e.g., 2021), whereas the baseline for ozone exposure analyses are the future years in which the regulatory options will be implemented (e.g., 2023 and 2026).

information about ozone concentrations experienced by everyone within each population.

In Chapter 7 of the RIA we utilize the two types of analytics to address the three EJ questions by quantitatively evaluating (1) the proximity of affected facilities to potentially disadvantaged populations (Section 7.3.1), (2) the potential for disproportionate total ozone concentrations in the baseline across different demographic groups (Sections 7.4.1.1 and 7.4.2.1), and (3) how regulatory alternatives differentially impact the ozone concentration changes experienced by different demographic populations (Sections 7.4.1.2 and 7.4.2.2). Each of these analyses depends on mutually exclusive assumptions, was performed to answer separate questions, and is associated with unique limitations and uncertainties.

Baseline demographic proximity analyses can be relevant for identifying populations that may be exposed to local pollutants, such as NO₂ emitted from affected sources in this proposed rule. However, such analyses are less useful here as they do not account for the potential impacts of this proposed rule on long-range ozone concentration changes. The baseline demographic proximity analysis presented in the RIA finds larger percentages of Hispanic individuals, Black individuals, people below the poverty level, people with less educational attainment, and people linguistically isolated living within 5 km and 10 km of an affected EGU, compared to national averages. It also finds larger percentages of people below the poverty level and with less educational attainment living within 5 km and 10 km of an affected non-EGU. Separately, the tribal proximity analysis finds multiple tribes and unique tribal lands located within 50 miles of an affected facility. These results do not in themselves demonstrate disproportionate impacts of affected facilities in the baseline but could suggest that emission reductions from this proposed rule may be responsive to potential local air quality concerns of nearby communities.

Whereas the proximity analyses are limited to evaluating local pollutants under baseline scenarios (question 1), the ozone exposure analyses can provide insight into all three EJ questions with regard to AS-MO3 concentrations. Even though both the proximity and ozone exposure analyses can improve understanding of baseline EJ concerns (question 1), the two should not be directly compared. This is because the demographic proximity analysis does not include air quality

information and is based on current, not future, population information.

Importantly, the baseline analysis of AS-MO3 ozone concentrations responds to question 1 from EPA's environmental justice technical guidance document more directly than the proximity analyses, as it evaluates a form of the environmental stressor targeted by the regulatory action. Baseline AS-MO3 analyses show that certain populations, such as American Indians, Hispanics, and Asians, may experience somewhat higher AS-MO3 concentrations compared to the national average. The less educated and children may also experience higher concentrations compared to the national average, but to a lesser extent. Conversely, Black populations may experience lower AS-MO3 concentrations than the national average. Therefore, also in response to question 1, there likely are potential environmental justice concerns associated with ozone exposures affected by the regulatory action for population groups of concern in the baseline. However, these baseline exposure results have not been fully explored and additional analyses are likely needed to understand potential implications.

The ozone exposure analysis evaluates the impacts of the proposed rule on future ozone concentrations after rule implementation. When comparing across the policy, more-, and less-stringent regulatory alternatives, AS-MO3 concentrations are reduced across all populations evaluated in both future years and across both EGUs and non-EGUs. In other words, we expect that populations experiencing disproportionate AS-MO3 exposures in the baseline will experience similar disproportionate AS-MO3 exposures under the proposed rulemaking, although to a lesser absolute extent as the action described in this proposed rule is expected to lower ozone in many areas, including residual ozone nonattainment areas, and thus alleviate some pre-existing health risks of ozone across all populations evaluated. Therefore, in response to question 2, we expect that there will be potential EJ concerns with regard to AS-MO3 concentrations after implementation of the regulatory options under consideration.

Question 3 asks whether potential EJ concerns will be created or mitigated as compared to the baseline. As the RIA estimates disproportionate AS-MO3 exposures in the baseline and similar reductions in all population evaluated, we do not predict that potential EJ concerns related to AS-MO3

concentrations will be created or mitigated as compared to the baseline (question 3).

The ozone exposure results should not be extrapolated to ozone metrics other than AS-MO3. Detailed environmental justice analytical results can be found in Chapter 7 of the RIA.

C. Outreach and Engagement

Prior to this proposed rule, EPA initiated a public outreach effort to gather input from stakeholder groups likely to be interested in this proposed rule. Specifically, the EPA hosted an environmental justice webinar on October 26, 2021, to share information about the proposed rule and solicit feedback about potential environmental justice considerations. The webinar was attended by over 180 individuals representing state governments, federally recognized tribes, environmental NGOs, higher education institutions, industry, and the EPA.³³⁸ Participants were invited to comment during the webinar or provide written comments to a pre-regulatory docket. The webinar was recorded and distributed to attendees after the event. Some of the key issues raised by stakeholders during the webinar and in the pre-proposal comments are described below.

Daily emissions rate limits. Several commenters asserted that cap and trade programs with seasonal limits on overall NO_x emissions do not prevent facilities from running their controls inefficiently on high ozone days. These commenters recommended that facilities linked to downwind ozone problems comply with daily rate limits to ensure that emissions reductions occur on days when ozone is highest. The commenters noted that daily limits could particularly benefit environmental justice communities located near facilities and would also benefit those located downwind.

Regulation of other sources. Several commenters asserted that the EPA should consider regulation of sources other than EGUs and sources of NO_x in rulemakings pertaining to issues of ozone transport. For example, some commenters asserted that the EPA should regulate emissions from non-EGUs, mobile sources, and sources of VOCs.

Environmental justice analysis and methodology in rulemakings. Several commenters offered recommendations to improve environmental justice analysis and methodology in rulemakings that address air pollution.

³³⁸ This does not constitute EPA's tribal consultation under E.O. 13175, which is described in Section XI.F of this proposed rule.

One commenter recommended that the EPA should broadly: (1) Identify communities of interest, based on the number of and proximity to polluting facilities; (2) integrate demographic factors to discern social, economic, and racial disparities in these areas; (3) consider the community’s particular vulnerabilities and sensitivities to health harms and risks, and exposure to cumulative health harms and risks; and (4) reach out to the community members near such facilities themselves to gain tangible, lived experiences across their lifetimes. The commenter also suggested that the EPA should build off factors identified in existing environmental justice screening tools, including EPA EJSCREEN and California’s CalEnviroScreen. One commenter noted that in developing environmental justice analyses, the EPA should consider and address the need for regulatory certainty, including the need for clear regulatory definitions of environmental justice areas and clear requirements for those areas.

Environmental justice stakeholder outreach in rulemakings. Some commenters asserted that the EPA could improve stakeholder outreach in the rulemaking process. For example, one commenter noted that during the development of a rule proposal, the EPA could more directly reach out to all potentially impacted environmental justice communities, be more prepared to answer questions about the rule proposal, and be more aware of holidays when establishing comment periods.

Additionally, some comments touched on issues that are also relevant to other EPA policies and programs. For example, some commenters asserted that the EPA should base air pollutant transport policy more on monitored data rather than modeling data to promptly address air pollution in areas where current monitoring data indicates an exceedance of the NAAQS. Other

commenters recommended that the EPA consider strengthening cost thresholds for Reasonably Available Control Technology (RACT), a program that is applicable to certain existing sources in non-attainment areas.

In addition to the engagement conducted prior to this proposed rule, EPA is providing the public, including those communities disproportionately impacted by the burdens of pollution, opportunities to engage in the EPA’s public comment period for this proposed rule, including by hosting a public hearing. This public hearing will occur according to the schedule identified in the Public Participation section of this proposed rule.

IX. Costs, Benefits, and Other Impacts of the Proposed Rule

In the Regulatory Impact Analysis for the proposed Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standards (RIA), EPA estimated the benefits, compliance costs, and emissions changes that may result from the proposed rule for the analysis period 2023 to 2042. The estimated benefits and compliance costs are presented in detail in the RIA accompanying this proposed rule. EPA notes that for EGUs the estimated benefits and compliance costs are directly associated with generation shifting to minimize costs; fully operating existing SCRs during ozone season; fully operating existing SNCRs during ozone season; installing state-of-the-art combustion controls; imposing backstop emission rate limits on certain units that lack SCR controls; and unit-level decisions to retrofit or retire. EPA also notes that for non-EGUs the estimated benefits and compliance costs are directly associated with installing controls to meet the NO_x emissions limits presented in Section I.B above.

For EGUs, EPA analyzed this proposed rule’s emission budgets using uniform control stringency represented by \$1,800 per ton of NO_x (2016\$) in 2023 and \$11,000 per ton of NO_x (2016\$) in 2026. EPA also analyzed a more and a less stringent alternative. The more and less stringent alternatives differ from the proposed rule in that they set different NO_x ozone season emission budgets for the affected EGUs and different dates for compliance with backstop emission rate limits.

For non-EGUs, EPA analyzed this proposed rule using a marginal cost threshold of up to \$7,500 per ton (2016\$) for 2026 for the following emissions units and industries: Reciprocating internal combustion engines in Pipeline Transportation of Natural Gas; kilns in Cement and Cement Product Manufacturing; boilers and furnaces in Iron and Steel Mills and Ferroalloy Manufacturing; furnaces in Glass and Glass Product Manufacturing; and high-emitting boilers in Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills. The less stringent alternative assumes there are emissions limits for all emission units from the proposal except for high-emitting boilers in Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills. The more stringent alternative assumes emissions limits for all emission units from the proposed rule and all boilers, not just high-emitting boilers, in Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills.

Table IX–1 provides the projected 2023 through 2027, 2030, 2035, and 2042 EGU emission reductions for the evaluated regulatory control alternatives. For additional information on emissions changes, see Table 4.6 and Table 4–7 in Chapter 4 of the RIA.

TABLE IX–1—EGU OZONE SEASON NO_x EMISSIONS CHANGES AND ANNUAL EMISSIONS REDUCTIONS (TONS) FOR NO_x, SO₂, PM_{2.5}, AND CO₂ FOR THE REGULATORY CONTROL ALTERNATIVES FROM 2023–2042

	Proposed rule	Less stringent alternative	More stringent alternative
2023:			
NO _x (ozone season)	6,000	6,000	7,000
NO _x (annual)	10,000	10,000	10,000
SO ₂ (annual)* .....	.....	1,000	2,000
CO ₂ (annual, thousand metric) .....	.....	.....	.....
PM _{2.5} (annual) .....	.....	.....	.....
2024:			
NO _x (ozone season)	26,000	14,000	29,000
NO _x (annual)	42,000	22,000	45,000
SO ₂ (annual)	42,000	20,000	43,000
CO ₂ (annual, thousand metric)	18,000	10,000	19,000
PM _{2.5} (annual)	4,000	1,000	4,000
2025:			

TABLE IX-1—EGU OZONE SEASON NO_x EMISSIONS CHANGES AND ANNUAL EMISSIONS REDUCTIONS (TONS) FOR NO_x, SO₂, PM_{2.5}, AND CO₂ FOR THE REGULATORY CONTROL ALTERNATIVES FROM 2023–2042—Continued

	Proposed rule	Less stringent alternative	More stringent alternative
NO _x (ozone season)	46,000	22,000	51,000
NO _x (annual)	73,000	33,000	80,000
SO ₂ (annual)	83,000	39,000	84,000
CO ₂ (annual, thousand metric)	37,000	19,000	38,000
PM _{2.5} (annual)	9,000	2,000	9,000
2026:			
NO _x (ozone season)	47,000	32,000	53,000
NO _x (annual)	81,000	55,000	87,000
SO ₂ (annual)	106,000	76,000	108,000
CO ₂ (annual, thousand metric)	40,000	26,000	42,000
PM _{2.5} (annual)	9,000	5,000	9,000
2027:			
NO _x (ozone season)	49,000	42,000	54,000
NO _x (annual)	88,000	76,000	95,000
SO ₂ (annual)	129,000	113,000	131,000
CO ₂ (annual, thousand metric)	43,000	34,000	46,000
PM _{2.5} (annual)	10,000	7,000	10,000
2030:			
NO _x (ozone season)	52,000	52,000	57,000
NO _x (annual)	96,000	98,000	100,000
SO ₂ (annual)	104,000	100,000	103,000
CO ₂ (annual, thousand metric)	50,000	45,000	50,000
PM _{2.5} (annual)	9,000	9,000	9,000
2035:			
NO _x (ozone season)	49,000	50,000	52,000
NO _x (annual)	90,000	93,000	93,000
SO ₂ (annual)	96,000	93,000	98,000
CO ₂ (annual, thousand metric)	38,000	36,000	38,000
PM _{2.5} (annual)	11,000	12,000	10,000
2042:			
NO _x (ozone season)	47,000	47,000	48,000
NO _x (annual)	70,000	75,000	71,000
SO ₂ (annual)	54,000	50,000	54,000
CO ₂ (annual, thousand metric)	25,000	23,000	24,000
PM _{2.5} (annual)	8,000	9,000	8,000

*SO₂ emissions reductions under the proposed rule are 350 tons and rounded to zero. SO₂ emissions reductions under the less stringent alternative are 507 tons and rounded to 1,000 tons. SO₂ emissions reductions are 1,699 tons under the more stringent alternative and rounded to 2,000 tons. Given the rounding, the difference between the reductions under the proposed rule and the less stringent alternative is approximately 160 tons.

Table IX-2 below provides a summary of the ozone season emissions for non-EGUs for the 23 states subject to the proposed non-EGU emissions limits starting in 2026, along with the estimated ozone season reductions for 2026 for the proposed rule and the less and more stringent alternatives. The analysis in the RIA assumes that the estimated reductions in 2026 will be the same in later years.

TABLE IX-2—OZONE SEASON (OS) NO_x EMISSIONS AND EMISSIONS REDUCTIONS (TONS) FOR NON-EGUS FOR THE PROPOSED RULE AND THE LESS AND MORE STRINGENT ALTERNATIVES *

State	2019 OS NO _x emissions ^a	Proposed rule—OS NO _x reductions	Less stringent alternative—OS NO _x reductions	More stringent alternative—OS NO _x reductions
AR	8,265	1,654	922	1,654
CA	14,579	1,666	1,598	1,777
IL	16,870	2,452	2,452	2,553
IN	19,604	3,175	2,787	3,175
KY	11,934	2,291	2,291	2,291
LA	35,831	6,769	4,121	6,955
MD	2,365	45	45	45
MI	18,996	2,731	2,731	3,093
MN	17,591	673	673	789
MO	9,109	3,103	3,103	3,103
MS	12,284	1,761	1,577	1,761
NJ	2,025	0	0	29
NV	2,418	0	0	0
NY	6,003	500	389	613
OH	19,729	2,790	2,611	2,814
OK	22,146	3,575	3,575	3,871

TABLE IX-2—OZONE SEASON (OS) NO_x EMISSIONS AND EMISSIONS REDUCTIONS (TONS) FOR NON-EGUS FOR THE PROPOSED RULE AND THE LESS AND MORE STRINGENT ALTERNATIVES *—Continued

State	2019 OS NO _x emissions ^a	Proposed rule—OS NO _x reductions	Less stringent alternative—OS NO _x reductions	More stringent alternative—OS NO _x reductions
PA	15,861	3,284	3,132	3,340
TX	47,135	4,440	4,440	6,596
UT	6,276	757	757	757
VA	7,041	1,563	1,465	1,660
WI	6,571	2,150	677	2,234
WV	9,825	982	982	982
WY	10,335	826	826	826
Totals	322,793	47,186	41,153	50,918

* In the non-EGU screening assessment for 2026, EPA estimated emissions reduction potential from the non-EGU industries and emissions units. In the screening assessment, EPA used CoST to identify emissions units, emissions reductions, and associated compliance costs to evaluate the effects of potential non-EGU emissions control measures and technologies. CoST is designed to be used for illustrative control strategy analyses (e.g., NAAQS regulatory impact analyses) and not for unit-specific, detailed engineering analyses. The estimates from CoST identify proxies for (1) non-EGU emissions units that have emissions reduction potential, (2) potential controls for and emissions reductions from these emissions units, and (3) control costs from the potential controls on these emissions units. The control cost estimates do not include monitoring, recordkeeping, reporting, or testing costs. This screening assessment is not intended to be, nor take the place of, a unit-specific detailed engineering analysis that fully evaluates the feasibility of retrofits for the emissions units, potential controls, and related costs.

^aEPA determined that the 2019 inventory was appropriate because it provided a more accurate prediction of potential near-term emissions reductions. The analysis in the RIA assumes that the 2019 ozone season emissions will be the same in 2026 and later years.

For EGUs, the EPA analyzed ozone season NO_x emission reductions and the associated costs to the power sector using the Integrated Planning Model (IPM) and its underlying data and inputs. For non-EGUs, the EPA analyzed ozone season NO_x emission reductions and the associated costs for 2026 in the Non-EGU Screening Assessment memorandum. Table IX-3 reflects the estimates of the changes in the cost of supplying electricity for the regulatory control alternatives for EGUs and

estimates of complying with the emissions limits for non-EGUs. For EGUs, compliance costs are negative in 2023. While seemingly counterintuitive, estimating negative compliance costs in a single year is possible given IPM's objective function is to minimize the discounted net present value (NPV) of a stream of annual total cost of generation over a multi-decadal time period. As such the model may undertake a compliance pathway that pushes higher costs later into the forecast period, since

future costs are discounted more heavily than near term costs. This can result in a policy scenario showing single year costs that are lower than the Baseline, but over the entire forecast horizon, the policy scenario shows higher costs. For a detailed description of these cost trends, please see Chapter 4, Section 4.5.2 of the RIA. For a detailed description of the methods and results from Non-EGU Screening Assessment memorandum, see Chapter 4, Sections 4.4 and 4.5.2 of the RIA.

TABLE IX-3—TOTAL ESTIMATED COMPLIANCE COSTS (MILLION 2016\$), 2023-2042

	Proposed rule	Less-stringent alternative	More-stringent alternative
2023:			
EGUs	-209	-173	-178
Non-EGUs			
Total	-209	-173	-178
2026:			
EGUs	707	-406	1,180
Non-EGUs	411	357	445
Total	1,117	-49	1,625
2027:			
EGUs	1,544	1,540	1,983
Non-EGUs	411	357	445
Total	1,955	1,896	2,428
2030:			
EGUs	1,235	1,200	1,740
Non-EGUs	411	357	445
Total	1,646	1,557	2,185
2035:			
EGUs	1,729	1,596	2,335
Non-EGUs	411	357	445
Total	2,139	1,953	2,780
2042:			
EGUs	910	1,757	1,001
Non-EGUs	411	357	445
Total	1,321	2,114	1,446

Tables IX–4 and IX–5 report the estimated economic value of avoided premature deaths and illness in each year relative to the baseline along with

the 95% confidence interval. In each of these tables, for each discount rate and regulatory control alternative, multiple benefits estimates are presented

reflecting alternative ozone and PM_{2.5} mortality risk estimates. For additional information on these benefits, see Chapter 5 of the RIA.

TABLE IX–4—ESTIMATED DISCOUNTED ECONOMIC VALUE OF AVOIDED OZONE AND PM_{2.5}-ATTRIBUTABLE PREMATURE MORTALITY AND ILLNESS FOR THE PROPOSED POLICY SCENARIOS IN 2023
[95% Confidence interval; millions of 2016\$]^{a b}

Disc. rate	Pollutant	Proposal	More stringent alternative	Less stringent alternative
3%	Ozone Benefits	\$57 (\$15 to \$120) ^c and \$460 (\$51 to \$1,200) ^d .	\$65 (\$17 to \$140) ^c and \$530 (\$59 to \$1,400) ^d .	\$57 (\$15 to \$120) ^c and \$460 (\$51 to \$1,200) ^d .
	PM Benefit Per Ton (BPTs).	\$44 and \$45	\$190 and \$190	\$59 and \$60.
	Ozone Benefits plus PM BPTs.	\$100 (\$59 to \$160) ^c and \$500 (\$96 to \$1,200) ^d .	\$250 (\$200 to \$330) ^c and \$720 (\$250 to \$1,600) ^d .	\$120 (\$74 to \$180) ^c and \$520 (\$110 to \$1,300) ^d .
7%	Ozone Benefits	\$51 (\$9.6 to 110) ^c and \$410 (\$42 to \$1,100) ^d .	\$58 (\$11 to \$130) ^c and \$480 (\$49 to \$1,300) ^d .	\$51 (\$9.6 to \$110) ^c and \$410 (\$42 to \$1,100) ^d .
	PM BPTs	\$40 and \$41	\$170 and \$170	\$53 and \$54.
	Ozone Benefits plus PM BPTs.	\$90 (\$49 to \$150) ^c and \$450 (\$83 to \$1,100) ^d .	\$230 (\$180 to \$300) ^c and \$650 (\$220 to \$1,400) ^d .	\$100 (\$63 to \$170) ^c and \$470 (\$97 to \$1,100) ^d .

^a Values rounded to two significant figures. The two benefits estimates are separated by the word “and” to signify that they are two separate estimates. The estimates do not represent lower- and upper-bound estimates and should not be summed.

^b We estimated ozone benefits for changes in NO_x for the ozone season and changes in PM_{2.5} and PM_{2.5} precursors for EGUs in 2023. This table does not include benefits from reductions for non-EGUs because reductions from these sources are not expected prior to 2026 when the proposed standards would become effective.

^c Using the pooled short-term ozone exposure mortality risk estimate.

^d Using the long-term ozone exposure mortality risk estimate.

TABLE IX–5—ESTIMATED DISCOUNTED ECONOMIC VALUE OF AVOIDED OZONE AND PM_{2.5}-ATTRIBUTABLE PREMATURE MORTALITY AND ILLNESS FOR THE PROPOSED POLICY SCENARIO IN 2026
[95% Confidence interval; millions of 2016\$]^{a b}

Disc. rate	Pollutant	Proposal	More stringent alternative	Less stringent alternative
3%	Ozone Benefits	\$1,200 (\$310 to \$2,600) ^c and \$10,000 (\$1,100 to \$26,000) ^d .	\$1,300 (340 to \$2,900) ^c and \$11,000 (\$1,200 to \$29,000) ^d .	\$830 (\$210 to \$1,800) ^c and \$6,900 (\$760 to \$18,000) ^d .
	PM BPTs	\$8,100 and \$8,300	\$7,800 and \$7,900	\$3,400 and \$3,500.
	Ozone Benefits plus PM BPTs.	\$9,300 (\$8,400 to \$11,000) ^c and \$18,000 (\$9,400 to \$35,000) ^d .	\$9,100 (\$8,100 to \$11,000) ^c and \$19,000 (\$9,200 to \$37,000) ^d .	\$4,300 (\$3,700 to \$5,200) ^c and \$10,000 (\$4,300 to \$22,000) ^d .
7%	Ozone Benefits	\$1,100 (\$200 to \$2,400) ^c and \$9,000 (\$920 to \$24,000) ^d .	\$1,200 (\$220 to \$2,700) ^c and \$10,000 (\$1,000 to \$26,000) ^d .	\$740 (\$140 to \$1,700) ^c and \$6,200 (\$630 to \$16,000) ^d .
	PM BPTs	\$7,300 and \$7,400	\$7,000 and \$7,100	\$3,100 and \$3,200.
	Ozone Benefits plus PM BPTs.	\$8,400 (\$7,500 to \$9,700) ^c and \$16,000 (\$8,300 to \$31,000) ^d .	\$8,200 (\$7,200 to \$9,700) ^c and \$17,000 (\$8,200 to \$34,000) ^d .	\$3,800 (\$3,200 to \$4,800) ^c and \$9,300 (\$3,800 to \$19,000) ^d .

^a Values rounded to two significant figures. The two benefits estimates are separated by the word “and” to signify that they are two separate estimates. The estimates do not represent lower- and upper-bound estimates and should not be summed.

^b We estimated changes in NO_x for the ozone season and changes in PM_{2.5} and PM_{2.5} precursors in 2026. This table represents changes in EGU and non-EGU ozone season and annual controls.

^c Sum of ozone mortality estimated using the pooled short-term ozone exposure risk estimate and the Di et al. (2017) long-term PM_{2.5} exposure mortality risk estimate.

^d Sum of the Turner et al. (2016) long-term ozone exposure risk estimate and the Di et al. (2017) long-term PM_{2.5} exposure mortality risk estimate.

In Tables IX–6, IX–7, and IX–8, EPA presents a summary of the monetized benefits, costs, and net benefits of the proposal and the more and less stringent alternatives for 2023, 2026, and 2030, respectively. The monetized benefits estimates do not include important

climate benefits that were not monetized in the RIA. In addition, there are important water quality benefits and health benefits associated with reductions in concentrations of air pollutants other than PM_{2.5} and ozone that are not quantified. We request

comment on how to address the climate benefits and other categories of non-monetized benefits of the proposed rule. Discussion of the non-monetized health, climate, welfare, and water quality benefits is found in Chapter 5 of the RIA.

TABLE IX–6—MONETIZED BENEFITS, COSTS, AND NET BENEFITS OF THE PROPOSED AND LESS AND MORE STRINGENT ALTERNATIVES FOR 2023 FOR THE U.S.
[Millions of 2016\$]^{a b}

	Proposed rule	Less stringent alternative	More stringent alternative
Benefits ^c (3%)	\$100 and \$500	\$120 and \$520	\$250 and \$720.
Costs ^d	–\$210	–\$170	–\$180.
Net Benefits	\$310 and \$710	\$290 and \$690	\$430 and \$900.
Benefits ^c (7%)	\$90 and \$450	\$100 and \$470	\$230 and \$650.
Costs ^d	–\$210	–\$170	–\$180
Net Benefits	\$300 and \$660	\$280 and \$640	\$400 and \$820.

^a We focus results to provide a snapshot of costs and benefits in 2023, using the best available information to approximate social costs and social benefits recognizing uncertainties and limitations in those estimates.

^b Rows may not appear to add correctly due to rounding.

^c Monetized benefits include those related to public health associated with reductions in PM_{2.5} and ozone concentrations. The health benefits are associated with several point estimates and are presented at a real discount rate of 3 percent. Several categories of benefits remain unmonetized and are thus not reflected in the table. Non-monetized benefits include important climate benefits from reductions in CO₂ emissions. The U.S. District Court for the Western District of Louisiana has issued an injunction concerning the monetization of the benefits of greenhouse gas emission reductions by EPA and other defendants. See *Louisiana v. Biden*, No. 21-cv-01074-JDC-KK (W.D. La. Feb. 11, 2022). Therefore, such values are not presented in the benefit-cost analysis of this proposal conducted pursuant to E.O. 12866. Please see Chapter 5, Section 5.2 of the RIA for more discussion. In addition, there are important unquantified water quality benefits and benefits associated with reductions in other air pollutants.

^d The costs presented in this table are 2023 annual estimates for each alternative analyzed. An NPV of costs was calculated using a 3.76% real discount rate consistent with the rate used in IPM's objective function for cost-minimization.

TABLE IX-7—MONETIZED BENEFITS, COSTS, AND NET BENEFITS OF THE PROPOSED AND LESS AND MORE STRINGENT ALTERNATIVES FOR 2026 FOR THE U.S.

(Millions of 2016\$)^{a,b}

	Proposed rule	Less stringent alternative	More stringent alternative
Benefits ^c (3%)	\$9,300 and \$18,000	\$4,300 and \$10,000	\$9,100 and \$19,000.
Costs ^d	\$1,100	-\$49	\$1,600.
Net Benefits	\$8,200 and \$17,000	\$4,300 and \$10,000	\$7,500 and \$17,000.
Benefits ^c (7%)	\$8,400 and \$16,000	\$3,800 and \$9,300	\$8,200 and \$17,000.
Costs ^d	\$1,100	-\$49	\$1,600
Net Benefits	\$7,300 and \$15,000	\$9,300 and \$3,900	\$6,600 and \$15,000.

^a We focus results to provide a snapshot of costs and benefits in 2026, using the best available information to approximate social costs and social benefits recognizing uncertainties and limitations in those estimates.

^b Rows may not appear to add correctly due to rounding.

^c Monetized benefits include those related to public health associated with reductions in PM_{2.5} and ozone concentrations. The health benefits are associated with several point estimates and are presented at a real discount rate of 3 percent. Several categories of benefits remain unmonetized and are thus not reflected in the table. Non-monetized benefits include important climate benefits from reductions in CO₂ emissions. The U.S. District Court for the Western District of Louisiana has issued an injunction concerning the monetization of the benefits of greenhouse gas emission reductions by EPA and other defendants. See *Louisiana v. Biden*, No. 21-cv-01074-JDC-KK (W.D. La. Feb. 11, 2022). Therefore, such values are not presented in the benefit-cost analysis of this proposal conducted pursuant to E.O. 12866. Please see Chapter 5, Section 5.2 of the RIA for more discussion. In addition, there are important unquantified water quality benefits and benefits associated with reductions in other air pollutants.

^d The costs presented in this table are 2026 annual estimates for each alternative analyzed. An NPV of costs was calculated using a 3.76% real discount rate consistent with the rate used in IPM's objective function for cost-minimization.

TABLE IX-8—MONETIZED BENEFITS, COSTS, AND NET BENEFITS OF THE PROPOSED AND LESS AND MORE STRINGENT ALTERNATIVES FOR 2030 FOR THE U.S.

(Millions of 2016\$)^{a,b}

	Proposed rule	Less stringent alternative	More stringent alternative
Benefits ^c (3%)	\$9,400 and \$20,000	\$4,300 and \$11,000	\$9,200 and \$21,000.
Costs ^d	\$1,600	\$1,600	\$2,200.
Net Benefits	\$7,700 and \$18,000	\$2,800 and \$9,700	\$7,000 and \$19,000.
Benefits ^c (7%)	\$8,400 and \$18,000	\$3,900 and \$10,000	\$8,300 and \$19,000.
Costs ^d	\$1,600	\$1,600	\$2,200.
Net Benefits	\$6,800 and \$16,000	\$2,300 and \$8,400	\$6,100 and \$16,000.

^a We focus results to provide a snapshot of costs and benefits in 2030, using the best available information to approximate social costs and social benefits recognizing uncertainties and limitations in those estimates.

^b Rows may not appear to add correctly due to rounding.

^c Monetized benefits include those related to public health associated with reductions in PM_{2.5} and ozone concentrations. The health benefits are associated with several point estimates and are presented at a real discount rate of 3 percent. Several categories of benefits remain unmonetized and are thus not reflected in the table. Non-monetized benefits include important climate benefits from reductions in CO₂ emissions. The U.S. District Court for the Western District of Louisiana has issued an injunction concerning the monetization of the benefits of greenhouse gas emission reductions by EPA and other defendants. See *Louisiana v. Biden*, No. 21-cv-01074-JDC-KK (W.D. La. Feb. 11, 2022). Therefore, such values are not presented in the benefit-cost analysis of this proposed rule conducted pursuant to E.O. 12866. Please see Chapter 5, Section 5.2 of the RIA for more discussion. In addition, there are important unquantified water quality benefits and benefits associated with reductions in other air pollutants.

^d The costs presented in this table are 2030 annual estimates for each alternative analyzed. An NPV of costs was calculated using a 3.76% real discount rate consistent with the rate used in IPM's objective function for cost-minimization.

In addition, Table IX-9 presents estimates of the present value (PV) of the monetized benefits and costs and the equivalent annualized value (EAV), an estimate of the annualized value of

the net benefits consistent with the present value, over the twenty-year period of 2023 to 2042. The estimates of the PV and EAV are calculated using discount rates of 3 and 7 percent as

directed by OMB's Circular A-4 and are presented in 2016 dollars discounted to 2022.

TABLE IX-9—MONETIZED ESTIMATED BENEFITS, COMPLIANCE COSTS, AND NET BENEFITS OF THE PROPOSED RULE AND LESS AND MORE STRINGENT ALTERNATIVES, 2023 THROUGH 2042
(Millions 2016\$, discounted to 2022) ^a

	3 Percent discount rate		7 Percent discount rate	
	PV	EAV	PV	EAV
Benefits				
Proposed Rule	\$250,000	\$17,000	\$150,000	\$14,000
Less Stringent Alternative	150,000	9,500	88,000	7,800
More Stringent Alternative	270,000	17,000	160,000	14,000
Compliance Costs				
Proposed Rule	22,000	1,500	14,000	1,300
Less Stringent Alternative	20,000	1,300	12,000	1,100
More Stringent Alternative	28,000	1,900	18,000	1,700
Net Benefits				
Proposed Rule	220,000	15,000	130,000	12,000
Less Stringent Alternative	120,000	8,100	70,000	6,600
More Stringent Alternative	230,000	15,000	130,000	12,000

^aThe U.S. District Court for the Western District of Louisiana has issued an injunction concerning the monetization of the benefits of greenhouse gas emission reductions by EPA and other defendants. See *Louisiana v. Biden*, No. 21-cv-01074-JDC-KK (W.D. La. Feb. 11, 2022). Therefore, such values are not presented in the benefit-cost analysis of this proposed rule conducted pursuant to E.O. 12866.

As shown in Table IX-9, the PV of the benefits of this proposed rule, discounted at a 3-percent discount rate, is estimated to be about \$250,000 million, with an EAV of about \$17,000 million. At a 7-percent discount rate, the PV of the benefits is estimated to be \$150,000 million, with an EAV of about \$14,000 million. The PV of the compliance costs, discounted at a 3-percent rate, is estimated to be about \$22,000 million, with an EAV of about \$1,500 million. At a 7-percent discount rate, the PV of the compliance costs is estimated to be about \$14,000 million, with an EAV of about \$1,300 million.

In addition to the analysis of costs and benefits, EPA also estimated the impacts on projected 2023 and 2026 ozone design values that are expected from the EGU and non-EGU control alternatives in this proposed rule. As described above, the alternative scenarios include the proposed rule along with scenarios that reflect less stringent and more stringent alternatives for EGUs and non-EGUs. The projected ozone design values and ozone impacts estimated in 2023 and 2026 for the proposed, less stringent, and more stringent alternatives are provided in Appendix 3B of the RIA. In summary, the differences in the amount of ozone reduction across the three alternatives at individual receptors in 2023 are consistent with the relative changes in NO_x emissions in this year under the different scenarios. Overall, in 2023 the estimated ozone reductions from all three of the alternatives are projected to be less than 0.1 ppb at most receptors.

The exceptions are at certain receptors in Connecticut, Illinois, Texas, and Utah where impacts are between 0.1 and 0.2 ppb. In 2026, the largest impacts in the proposed rule are estimated at the two receptors in Texas (*i.e.*, Brazoria County and Harris County), where the average reduction is 1.3 ppb. Elsewhere in 2026, the average reductions for the proposed rule are on the order of 0.5 ppb at receptors in Connecticut, Illinois, and Wisconsin. The average reduction for the four receptors in Utah is approximately 0.3 ppb, while the average reduction at receptors in Colorado and California are approximately 0.2 ppb. Overall, the less stringent alternative provides approximately 0.1 to 0.3 ppb less ppb reduction (*i.e.*, 30 to 40 percent less reduction), on average, compared to the proposed rule at receptors in the East and in Colorado and Utah. The more stringent alternative does not appear to provide any notable additional ozone reductions compared to the proposed rule in all receptor areas, except at receptors in Connecticut and Texas where the average reduction increases by 0.1 ppb and 0.2 ppb with the more stringent alternative, respectively.

Examining the projected average and maximum design values in 2023 at individual receptors for the proposed, less stringent, and more stringent alternatives indicates that three of the receptors included in this impact analysis are projected to change attainment status in 2023 as a result of this proposed rule. Specifically, receptors in Clark County, Nevada,

Butte County, California, and Riverside County Californian (Monitor ID: 060650008) are projected to switch from maintenance-only in the 2023 baseline to attainment and the receptor in Harris County, Texas is projected to switch from nonattainment to maintenance-only under any of the alternatives in 2023. In 2026, six of the receptors in this analysis are projected to change attainment status as a result of the emissions reductions in this proposed rule. Specifically, Calaveras County, California, Brazoria County, Texas, and in Kenosha County, Wisconsin (Monitor ID: 550590025) are projected to switch from maintenance-only to attainment in 2026 and a receptor in Riverside County, California (Monitor ID: 060650016) is projected to switch from nonattainment to maintenance under any of the alternatives. The receptor in Douglas County, Colorado and one of the receptors in Cook County, Illinois (Monitor ID: 170310076) are projected to switch from maintenance-only to attainment under the proposed and more stringent alternatives, but these receptors are projected to remain as maintenance-only in the less stringent alternative. The projected design values and additional information on the ozone impact analysis can be found in Appendix 3B of the proposed rule RIA.

X. Summary of Proposed Changes to the Regulatory Text for the Federal Implementation Plans and Trading Programs for EGUs

This section describes the proposed amendments to the regulatory text that

would implement the proposed findings and remedy discussed elsewhere in this proposed rule with respect to EGUs. The primary CFR amendments would be revisions to the FIP provisions addressing states' good neighbor obligations related to ozone in 40 CFR part 52 as well as the revisions to the regulations for the CSAPR NO_x Ozone Season Group 3 Trading Program in 40 CFR part 97, subpart GGGGG. In conjunction with the amendments to the Group 3 trading program, the monitoring, recordkeeping, and reporting regulations in 40 CFR part 75 would be amended to reflect the addition of certain new reporting requirements associated with the amended trading program and the administrative appeal provisions in 40 CFR part 78 would be amended to identify certain additional types of appealable decisions of the EPA Administrator under the amended trading program. The proposed provisions to address the transition of the EGUs in certain states from the Group 2 trading program to the Group 3 trading program would be implemented in part through revisions to regulations noted above and in part through revisions to the regulations for the Group 2 trading program in 40 CFR part 97, subpart EEEEE.

In addition to these primary amendments, certain revisions are proposed to the regulations for the other CSAPR trading programs in 40 CFR part 97, subparts AAAAA through EEEEE, and the Texas SO₂ Trading Program in 40 CFR part 97, subpart FFFFF, for conformity with the proposed amended provisions of the Group 3 trading program, as discussed in Section VII.B.12 of this proposed rule. Documents have been included in the docket for this proposed rule showing all of the proposed revisions in redline-strikeout format.

A. Amendments to FIP Provisions in 40 CFR Part 52

The CSAPR, CSAPR Update, and Revised CSAPR Update FIP requirements related to ozone season NO_x emissions are set forth in 40 CFR 52.38(b) as well as other sections of part 52 specific to each covered state. The existing text of § 52.38(b)(1) identifies the trading program regulations in 40 CFR part 97, subparts BBBB, EEEEE, and GGGGG as constituting the relevant FIP provisions relating to seasonal NO_x emissions and transported ozone pollution. Because the EPA is proposing in this rulemaking to establish new or amended FIP requirements not only for the types of EGUs covered by the trading programs but also for other types

of sources, a proposed amendment to § 52.38(b)(1) would clarify that the trading programs constitute the FIP provisions only for the sources meeting the applicability requirements of the trading programs. A parallel clarification would be added to §§ 52.38(a)(1) and 52.39(a) with respect to the CSAPR FIP requirements relating to annual NO_x emissions, SO₂ emissions, and transported fine particulate pollution.

The states whose EGU sources are required to participate in the CSAPR NO_x Ozone Season Group 1, Group 2, and Group 3 trading programs under the FIPs established in CSAPR, the CSAPR Update, and the Revised CSAPR Update, as well as the control periods for which those requirements apply, are identified in § 52.38(b)(2). Proposed amendments to this paragraph would expand the applicability of the Group 3 trading program to sources in the thirteen additional states that the EPA is proposing to add to the Group 3 trading program starting with the 2023 control period and would end the applicability of the Group 2 trading program (with the exception of certain provisions) for sources in eight of the thirteen states after the 2022 control period, as discussed in Section VII.B.2 of this proposed rule.³³⁹ The current subparagraphs within § 52.38(b)(2) would also be renumbered to clarify the organization of the provisions and to facilitate cross-references from other regulatory provisions. Regarding the two states currently participating in the Group 2 trading program through approved SIP revisions that replaced the previous FIPs issued under the CSAPR Update (Alabama and Missouri), a provision indicating that EPA would no longer administer the state trading programs adopted under those SIP revisions after the 2022 control period would be added at § 52.38(b)(16)(ii)(B).

In the Revised CSAPR Update, the EPA established several options for states to revise their SIPs to modify or replace the FIPs applicable to their sources while continuing to use the Group 3 trading program as the mechanism for meeting the states' good neighbor obligations. Existing § 52.38(b)(10), (11), and (12) establish options to replace allowance allocations for the 2022 control period, to adopt an abbreviated SIP revision for control periods in 2023 or later years, and to adopt a full SIP revision for control periods in 2023 or later years,

³³⁹ Both the current text of § 52.38(b)(2) and the proposed amended text expressly encompass sources in Indian country within the respective states' borders.

respectively. As discussed in Section VII.D of this proposed rule, the EPA is proposing to retain these SIP revision options and to make them available for all states that would be covered by the Group 3 trading program after the proposed geographic expansion. The option under § 52.38(b)(10) to replace allowance allocations for a single control period would be amended to be available for the 2024 control period, with attendant revisions to the years and dates shown in § 52.38(b)(10) (multiple paragraphs) and (b)(17)(i) as well as the Group 3 trading program regulations, as discussed in Section X.B of this proposed rule. The options under § 52.38(b)(11) and (12) to adopt abbreviated or full SIP revisions would be amended to be available starting with the 2025 control period, with attendant revisions to § 52.38(b)(11)(iii), (b)(12)(iii), and (b)(17)(ii).³⁴⁰

The proposed changes with respect to set-asides, the treatment of units in Indian country, and recordation schedules discussed in Section VII.B.9 of this proposed rule, although implemented largely through proposed amendments to the Group 3 trading program regulations, would also be implemented in part through proposed amendments to § 52.38(b)(11) and (12). First, the text in § 52.38(b)(11)(iii)(A) and (b)(12)(iii)(A) identifying the portion of each state trading budget for which a state could establish state-determined allowance allocations would be revised to exclude any allowances in a new unit set-aside, Indian country new unit set-aside, or Indian country existing unit set-aside. Second, the text in § 52.38(b)(12)(vi) identifying provisions that states could not adopt into their SIPs (because the provisions concern regulation of sources in Indian country not subject to a state's CAA implementation planning authority) would be revised to include the provisions of the amended Group 3 trading program addressing allocation and recordation of allowances from all types of set-asides. Third, the text in § 52.38(b)(12)(vii) authorizing the EPA to modify the previous approval of a SIP revision with regard to the assurance provisions "if and when a covered unit is located in Indian country" would be revised to account for the fact that at least one covered unit would already be located in Indian country not subject to a state's jurisdiction if the geographic expansion proposed in this rulemaking

³⁴⁰ No state currently in the Group 3 trading program has submitted a SIP revision to make use of these options in control periods before the control periods in which the options could be used under the proposed amendments.

is finalized. Finally, the text in § 52.38(b)(11)(iii)(B) and (b)(12)(iii)(B) would be revised to amend the deadline for states to submit state-determined allowance allocations to the EPA from June 1 in the third year before the relevant control period to June 1 in the year before the relevant control period.

The proposed transitional provisions discussed in Section VII.B.11 of this proposed rule to convert certain 2017–2022 Group 2 allowances to Group 3 allowances and to recall certain 2023–2024 Group 2 allowances, although promulgated as amendments to the Group 2 trading program regulations, would necessarily be implemented after the end of the 2022 control period. Proposed amendments clarifying that these provisions continue to apply to the relevant sources and holders of allowances notwithstanding the transition of certain states out of the Group 2 trading program after the 2022 control period would be added at § 52.38(b)(14)(iii)(F) and (G). Cross-references clarifying that EPA's allocations of the converted Group 3 allowances would not be subject to modification through SIP revisions would also be added to the existing provisions at § 52.38(b)(11)(iii)(D) and (b)(12)(iii)(D).

The general FIP provisions applicable to all states covered by this proposed rule as set forth in § 52.38(b)(2) would be replicated in the state-specific subparts of 40 CFR part 52 for each of the thirteen states that the EPA is proposing to add to the Group 3 trading program.³⁴¹ In each such state-specific CFR subpart, provisions would be added indicating that sources in the state are required to participate in the CSAPR NO_x Ozone Season Group 3 Trading Program with respect to emissions starting in 2023. Provisions would also be added repeating the substance of § 52.38(b)(13)(i), which generally provides that the Administrator's full and unconditional approval of a full SIP revision correcting the same SIP deficiency that is the basis for a FIP promulgated in this rulemaking would cause the FIP to no longer apply to sources subject to the state's CAA implementation planning authority, and § 52.38(b)(14)(ii), which generally provides the EPA with authority to complete recordation of EPA-determined allowance allocations for any control period for which EPA

³⁴¹ See proposed §§ 52.54(b) (Alabama), 52.184(a) (Arkansas), 52.440(d) (Delaware), 52.1240(d) (Minnesota), 52.1824(a) (Mississippi), 52.1326(b) (Missouri), 52.1492 (Nevada), 52.1930(a) (Oklahoma), 52.2240(e) (Tennessee), 52.2283(d) (Texas), 52.2356 (Utah), 52.2587(e) (Wisconsin), and 52.2638(a) (Wyoming).

has already started such recordation notwithstanding the approval of a state's SIP revision establishing state-determined allowance allocations.

For each of the eight states that the EPA is proposing to remove from the Group 2 trading program, the current provisions of the state-specific CFR subparts indicating that sources in the state are required to participate in that trading program would be revised to end that requirement with respect to emissions after 2022, and a further provision would be added repeating the substance of § 52.38(b)(14)(iii), which identifies certain provisions that continue to apply to sources and allowances notwithstanding discontinuation of a trading program with respect to a particular state.³⁴² In addition, for the six states that during their time in the Group 2 trading program have not exercised the option to adopt full SIP revisions to replace the FIPs issued under the CSAPR Update (all but Alabama and Missouri), obsolete provisions concerning the unexercised SIP revision option would be removed.

No amendments with respect to FIP requirements for EGUs would be made to the state-specific CFR subparts for the twelve states whose sources currently participate in the Group 3 trading program³⁴³ except as needed to update cross-references or to implement the proposed changes related to the treatment of Indian country, as discussed in Section X.D of this proposed rule.

B. Amendments to Group 3 Trading Program and Related Regulations

To implement the geographic expansion of the Group 3 trading program and the revised trading budgets that would be established under the new and amended FIPs proposed in this rulemaking, several sections of the Group 3 trading program regulations would be amended. Revisions identifying the applicable control periods, deadlines for certification of monitoring systems, and deadlines for commencement of quarterly reporting for sources not previously covered by the Group 3 trading program would be made at §§ 97.1006(c)(3)(i), 97.1030(b)(1), and 97.1034(d)(2)(i),

³⁴² See proposed §§ 52.54(b) (Alabama), 52.184(a) (Arkansas), 52.1824(a) (Mississippi), 52.1326(b) (Missouri), 52.1930(a) (Oklahoma), 52.2240(e) (Tennessee), 52.2283(d) (Texas), and 52.2587(e) (Wisconsin).

³⁴³ See proposed §§ 52.731(b) (Illinois), 52.789(b) (Indiana), 52.940(b) (Kentucky), 52.984(d) (Louisiana), 52.1084(b) (Maryland), 52.1186(e) (Michigan), 52.1584(e) (New Jersey), 52.1684(b) (New York), 52.1882(b) (Ohio), 52.2040(b) (Pennsylvania), 52.2440(b) (Virginia), and 52.2540(b) (West Virginia).

respectively. Revisions identifying the proposed new or revised budgets and new unit set-asides for the 2023 and 2024 control periods for all covered states would be made at § 97.1010(a)(1) and (b)(1), respectively.

Each of the proposed enhancements to the Group 3 trading program discussed in Section VII.B of this proposed rule would also be implemented primarily through revisions to the trading program regulations. The dynamic budget-setting process discussed in Section VII.B.4 of this proposed rule would be implemented at § 97.1010(a)(2) and (3), and the associated revised process for determining variability limits and assurance levels discussed in Section VII.B.5 of this proposed rule would be implemented at § 97.1010(e). The Group 3 allowance bank recalibration process discussed in Section VII.B.6 of this proposed rule would be implemented at § 97.1026(d). The backstop daily NO_x emissions rate component of the primary emissions limitation discussed in Section VII.B.7 would be implemented at §§ 97.1006(c)(1)(i) and 97.1024(b)(1) and (3), accompanied by the addition of a definition of “backstop daily NO_x emissions rate” and modification of the definition of “CSAPR NO_x Ozone Season Group 3 allowance” in § 97.1002. The secondary emissions limitation for sources found responsible for exceedances of the assurance levels discussed in Section VII.B.8 of this proposed rule would be implemented at §§ 97.1006(c)(1)(iii) and (iv) and (c)(3)(ii) and 97.1025(c), accompanied by the addition of a definition of “CSAPR NO_x Ozone Season Group 3 secondary emissions limitation” in § 97.1002.

The proposed changes relating to set-asides, the treatment of Indian country, unit-level allowance allocations, and recordation schedules discussed in Section VII.B.9 of this proposed rule would be implemented through revisions to multiple sections of §§ 97.1010, 97.1011, 97.1012, and 97.1021, as well as limited revisions to 97.1002 (definition of “allocate or allocation”) and 97.1006(b)(2). In § 97.1010, paragraphs (b), (c), and (d) would address the amounts for each control period of the new unit set-asides, Indian country new unit set-asides, and Indian country existing unit set-asides, respectively. Paragraphs (c) and (d) would reflect the discontinuation of Indian country new unit set-asides after the 2022 control period and the establishment of Indian

country existing unit set-asides starting with the 2023 control period.³⁴⁴

The proposed revisions to § 97.1011 would refocus the section exclusively on allocation to “existing” units from the portion of each state emissions budget not reserved in a new unit set-aside or Indian country new unit set-aside. In § 97.1011(a), the provision currently in § 97.1011(a)(1) requiring allocations to existing units to be made in the amounts provided in notices of data availability (NODAs) issued by the EPA would be split into two separate provisions, with paragraph (a)(1) applying to existing units in the state and areas of Indian country covered by the state’s CAA implementation planning authority and paragraph (a)(2) applying to existing units in areas of Indian country not covered by the state’s CAA implementation planning authority.³⁴⁵ This split would facilitate the submission and approval of SIP revisions by states interested in submitting state-determined allowance allocations for the units over which they exercise CAA implementation authority, while leaving allocations to any units outside their authority to be addressed either by the EPA or by the relevant tribe under an approved tribal implementation plan. The proposed dynamic process for determining default allocations to existing units of allowances from state trading budgets starting with the 2025 control period would be set forth in revised § 97.1011(b), while the current provisions of § 97.1011(b), which concern timing and notice procedures for allocations to new units, would be relocated to § 97.1012. The provisions addressing incorrectly allocated allowances at § 97.1011(c) would be streamlined by relocating the portions applicable to new units to § 97.1012(c). In addition, as discussed in Section VII.B.9.d of this proposed rule, § 97.1011(c)(5) would be revised to provide that, starting with the 2024

control period, any incorrectly allocated allowances recovered after May 1 of the year following the control period would not be reallocated to other units in the state but instead would be transferred to a surrender account.

The proposed revisions to § 97.1012 would retain the section’s current focus on allocations to “new” units, generally combining the current provisions at § 97.1012 with the current provisions at § 97.1011(b) and (c) that address new units. The text of multiple paragraphs in both § 97.1012(a) and (b) would be revised as needed to reflect the change in treatment of Indian country discussed in Section VII.B.9.a of this proposed rule, under which the new unit set-asides would be used to provide allowance allocations to new units both in non-Indian country and Indian country within the borders of the respective states for control periods starting in 2023.³⁴⁶ The timing and notice provisions in proposed § 97.1012(a)(13) and (b)(13) are relocated from current § 97.1011(b)(1) and (2). The text of § 97.1012(c), addressing incorrect allocations to new units, is largely relocated from § 97.1011(c) (which addresses incorrect allocations to existing units) and reflects a parallel proposed revision addressing the disposition of recovered allowances, as discussed in Section VII.B.9.d of this proposed rule.

The proposed amendments to § 97.1021 would implement three distinct sets of changes discussed in Sections VII.B.9 and VII.D.1 of this proposed rule. First, revisions to § 97.1021(b) through (e) would replace the previous schedule for recording Group 3 allowances for the 2023 and 2024 control periods established in the Revised CSAPR Update with an updated recordation schedule tailored to the expected timing for issuance of a final rule in this rulemaking. The updated schedule would also reflect elimination of the unused former option for states to provide state-determined allowance allocations for the 2022 control period and the proposed establishment of a substantively equivalent new option for states to provide state-determined allowance allocations for the 2024 control period. Second, revisions to § 97.1021(f) would change the schedule for recording allocations to existing

units for future control periods from July 1 of the year three years before the control period to July 1 of the year before the control period. Finally, revisions to § 97.1021(g) through (j) would end recordation for Indian country new unit set-asides after allocations for the 2022 control period, begin recordation for Indian country existing unit set-asides starting with allocations for the 2023 control period, and modify the text to eliminate references to state-determined allocations of allowances from new unit set-asides.

Implementation of the proposed revisions to the Group 3 trading program would also be accomplished in part through amendments to regulations in other CFR parts. In 40 CFR part 75, which contains detailed monitoring, recordkeeping, and reporting requirements applicable to sources covered by the Group 3 trading program, the additional recordkeeping and reporting requirements discussed in Section VII.B.10.b of this proposed rule would be implemented through the addition of §§ 75.72(f) and 75.73(f)(1)(ix) and (x) and revisions to § 75.75, and the procedures for calculating daily total heat input and daily total NO_x emissions and for apportioning NO_x mass emissions monitored at a common stack among the individual units using the common stack would be added at sections 5.3.3, 8.4(c), and 8.5.3 of appendix F to part 75. In 40 CFR part 78, which contains the administrative appeal procedures applicable to decisions of the EPA Administrator under the Group 3 trading program, § 78.1(b)(19) would be amended to list additional decisions made as part of the trading program enhancements that would be appealable under those procedures.

C. Transitional Provisions

As discussed in Section VII.D.11 of this proposed rule, the EPA is proposing several transitional provisions for sources entering the Group 3 trading program. The provisions discussed in Section VII.D.11.a of this proposed rule, concerning the prorating of state emissions budgets, assurance levels, and unit-level allocations for the 2023 control period, would be implemented through the Group 3 trading program regulations. Specifically, the state emissions budgets for the 2023 control period would be prorated according to procedures set out at § 97.1010(a)(1)(ii). Variability limits for the 2023 control period, and the resulting assurance levels, would be computed under § 97.1010(e) from the prorated state emissions budgets. Unit-level

³⁴⁴ The current § 97.1011(c), which addresses the relationships of set-asides and variability limits to state trading budgets, would be relocated to § 97.1011(f).

³⁴⁵ An additional provision currently in § 97.1011(a)(1), which clarifies that an allocation or lack of allocation to a unit in a NODA does not constitute a determination by the EPA that the unit is or is not a CSAPR NO_x Ozone Season Group 3 unit, would be relocated to § 97.1011(a)(3). The current § 97.1011(a)(2), which provides for certain existing units that cease operations to receive allowances for their first five control periods of non-operation and provides for the allowances for subsequent control periods to be allocated to the relevant state’s new unit set-asides, is inconsistent with the proposed revisions to the set-asides and the default allowance allocation process, as discussed in Section VII.B.9 of this proposed rule, and would be removed as obsolete.

³⁴⁶ Revisions are also proposed to the text of § 97.1012(a) and (b) for the control periods in 2021 and 2022 consistent with the proposed revisions to the parallel provisions in the regulations for the other CSAPR trading programs, generally calling for allocations to units in areas of Indian country subject to a state’s CAA implementation planning authority to be made from the new unit set-asides instead of from the Indian country new unit set-asides.

allocations to existing units for the 2023 control period would be computed from the prorated state emissions budgets according to procedures substantively the same as the procedures codified in § 97.1011(b) for calculating default allocations to existing units for later control periods, as discussed in Section VII.B.9.b of this proposed rule, and would be announced in the notice of data availability issued under § 97.1011(a)(1) and (2) for the 2023 and 2024 control periods.

The remaining transitional provisions would be implemented through the Group 2 trading program regulations. The creation of an additional Group 3 allowance bank for the 2023 control period through the conversion of banked 2017–2022 Group 2 allowances as discussed in Section VII.B.11.b of this document would be implemented at § 97.826(e).³⁴⁷ Related provisions addressing the use of Group 3 allowances to satisfy after-arising compliance obligations under the Group 2 trading program or the Group 1 trading program would be implemented at §§ 97.826(f)(2) and 97.526(e)(3), respectively, and related provisions addressing recordation of late-arising allocations of Group 1 allowances would be implemented at § 97.526(d)(2)(iii). The recall of Group 2 allowances previously issued for the 2023 and 2024 control periods as discussed in Section VII.B.11.c of this document would be implemented at § 97.811(e).

Decisions of the Administrator related to the allowance bank creation provisions and the allowance recall provisions would be identified as appealable decisions under 40 CFR part 78 through revisions to § 78.1(b)(17)(viii) and (ix).

D. Clarifications and Conforming Revisions

As discussed in Section VII.B.12 of this proposed rule, the EPA is proposing to make revisions to the provisions regarding allowance allocations for units in Indian country in all the CSAPR trading programs so that instead of distinguishing among units based on whether they are or are not located in Indian country, the revised provisions would distinguish among units based on whether they are or are not covered by a state's CAA implementation planning authority. The proposed revisions would be implemented in multiple paragraphs of §§ 97.411(b), 97.412, 97.511(b), 97.512, 97.611(b), 97.612, 97.711(b), 97.712, 97.811(b), and 97.812.

The associated revisions to states' options regarding SIP revisions to establish state-determined allowance allocations for units covered by their CAA implementation planning authority would be implemented in multiple paragraphs of §§ 52.38(a) and (b) and 52.39 as well as the state-specific subparts of 40 CFR part 52.

As also discussed in Section VII.B.12 of this proposed rule, the EPA is proposing to revise the recordation schedule for allowance allocations to existing units under all the CSAPR trading programs, as well as the Texas SO₂ Trading Program, so that starting with the 2025 control period the allocation deadline would generally be July 1 of the year before the control period instead of July 1 of the year 3 years before the control period. The revisions would be implemented at §§ 97.421(f)(2), 97.521(f)(2), 97.621(f)(2), 97.721(f)(2), 97.821(f), and 97.921(b)(2).

Certain other revisions to the regulatory text in the FIP and trading program regulations are proposed as non-substantive clarifications. First, in the Group 2 trading program regulations, the paragraphs in § 97.810 setting forth the amounts of state emissions budgets, new unit set-asides, Indian country new unit set-asides, and variability limits for states that the EPA is proposing to transition out of the Group 2 trading program would be modified to indicate that the amounts are applicable under that program only for control periods through 2022.

Second, as noted in Section VII.F.1 of this proposed rule, the existing option for states subject to the NO_x SIP Call to expand applicability of the Group 2 trading program to include certain large non-EGU boilers and combustion turbines would become obsolete if this rule is finalized as proposed because no NO_x SIP Call states would continue to be covered by the Group 2 trading program. The proposed elimination of the obsolete option would be implemented in part through revisions to § 52.38(b)(8) (multiple paragraphs), (b)(9) (multiple paragraphs), (b)(13)(ii), (b)(14)(i)(F), and (b)(16)(i)(B), and in part through revisions to the Group 2 trading program regulations at §§ 97.806(c)(2) and (3), 97.825, and 97.802 (removal of the definitions of “base CSAPR NO_x Ozone Season Group 2 source” and “base CSAPR NO_x Ozone Season Group 2 unit” and modification of the definitions of “assurance account”, “common designated representative”, “common designated representative's assurance level”, and “common designated representative's share”).

Third, to clarify the regulatory text, the EPA is proposing to remove the language in the Group 3 trading program regulations finalized in the Revised CSAPR Update relating to the “supplemental allowances” issued for the 2021 control period in current §§ 97.1002 (definition of “common designated representative's assurance level”), 97.1006(c)(2)(iii), 97.1010(d), and 97.1011(a)(1). In place of the removed language, the EPA proposes to restate the amounts of the state emissions budgets for the 2021 control period in § 97.1010(a)(1)(i) so as to include the amounts of the supplemental allowances in the restated budget amounts. The revised language would be substantively equivalent to and simpler than the current language.

Fourth, in 40 CFR part 75, the EPA proposes to remove obsolete text in § 75.73(c) and (f) to clarify the context for other text that would be added to the section, as discussed in Section X.B.

Finally, the EPA proposes to update cross-references throughout 40 CFR parts 52 and 97 for consistency with the other amendments proposed in this rulemaking.

XI. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive Orders (“E.O.”) can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed rule is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This proposed rule is in response to a court-ordered legal mandate and proposes to implement EGU and novel non-EGU NO_x ozone season emissions reductions as part of the overall strategy for addressing interstate transport of ozone pollution for the 2015 ozone NAAQS. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this proposed rule. This analysis, which is contained in the “Regulatory Impact Analysis for the Proposed Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard” [EPA-452/R-15-009], is available in the docket and is briefly summarized in Section IX of this proposed rule.

³⁴⁷ The current provisions at § 97.826(e) would be relocated to § 97.826(f)(1) and (3).

B. Paperwork Reduction Act (PRA)

1. Information Collection Request for Electric Generating Units

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2709.01. EPA has placed a copy of the ICR in the docket for this rule, and it is briefly summarized here.

EPA is proposing an information collection request (ICR), related specifically to electric generating units (EGU), for the proposed Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Primary Ozone National Ambient Air Quality Standard. The proposed rule would amend the Cross-State Air Pollution Rule (CSAPR) NO_x Ozone Season Group 3 trading program addressing seasonal NO_x emissions in various states. Under the proposed amendments, all EGU sources in the original twelve Group 3 states (Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia) would remain. Additionally, EGU sources in eight states (Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin) currently covered by the CSAPR NO_x Ozone Season Group 2 Trading Program would transition from the Group 2 program to the revised Group 3 trading program beginning with the 2023 ozone season. Further, sources in five states not currently covered by any CSAPR NO_x ozone season trading program would join the revised Group 3 trading program: Delaware, Minnesota, Nevada, Utah, and Wyoming. In total, EGU sources in 25 states would now be covered by the Group 3 program.

There is an existing ICR (OMB Control Number 2060-0667), that includes information collection requirements placed on EGU sources for the six Cross-State Air Pollution Rule (CSAPR) trading programs addressing sulfur dioxide (SO₂) emissions, annual nitrogen oxides (NO_x) emissions, or seasonal NO_x emissions in various sets of states, and the Texas SO₂ trading program which is modeled after CSAPR. This ICR accounts for the additional respondent burden related to the amendments to the CSAPR NO_x Ozone Group 3 trading program.

The principal information collection requirements under the CSAPR and Texas trading programs relate to the monitoring and reporting of emissions

and associated data in accordance with 40 CFR part 75. Other information collection requirements under the programs concern the submittal of information necessary to allocate and transfer emission allowances and the submittal of certificates of representation and other typically one-time registration forms.

Affected sources under the CSAPR and Texas trading programs are generally stationary, fossil fuel-fired boilers and combustion turbines serving generators larger than 25 megawatts (MW) producing electricity for sale. Most of these affected sources are also subject to the Acid Rain Program (ARP). The information collection requirements under the CSAPR and Texas trading programs and the ARP substantially overlap and are fully integrated. The burden and costs of overlapping requirements are accounted for in the ARP ICR (OMB Control Number 2060-0258). Thus, this ICR accounts for information collection burden and costs under the CSAPR NO_x Ozone Season Group 3 trading program that are incremental to the burden and costs already accounted for in both the ARP and CSAPR ICRs.

For most sources already reporting data under the CSAPR NO_x Ozone Season Group 3 or CSAPR NO_x Ozone Group 2 trading programs, there would be no incremental burden or cost, as reporting requirements will remain identical. Certain sources with a common stack configuration and/or those that are large, coal-fired EGUs, will be subject to additional emission reporting requirements under the proposed rule. These sources will need to make a one-time monitoring plan and Data Acquisition and Handling System (DAHS) update to meet the additional reporting requirements. Remaining for assessment of incremental cost and burden are only those sources in the five states not currently reporting data under a CSAPR NO_x Ozone Season program. Sources in Minnesota are already reporting data for the CSAPR NO_x Annual program with almost identical information collection requirements, requiring only a one-time monitoring plan and DAHS update. Most of the affected sources in Delaware, Nevada, Utah, and Wyoming are already reporting data as part of the Acid Rain Program, thus only requiring a monitoring plan and DAHS update as well. Four additional EGUs in Delaware already report data under SIP requirements adopted to meet the NO_x SIP Call and would face identical information requirements under this proposed rule. For the units that already report to EPA under the Acid Rain

Program or the NO_x SIP Call, with the exception of any one-time costs to update monitoring plans and DAHS, all information collection costs and burden are already reflected in the previously approved ICRs for those other rules (OMB Control Nos. 2060-0258 and 2060-0445).

In total, there are an estimated 16 units in Delaware, Nevada, Utah, and Wyoming that do not already report data to EPA according to 40 CFR part 75 and that would need to implement one of the Part 75 monitoring methodologies including certification of monitoring systems or implementation of the low mass emissions methodology. These units would also require monitoring plan and DAHS updates. Of these sixteen units, two units would be expected to adopt low mass emissions (LME) as the monitoring method, thirteen would be expected to adopt Appendix D monitoring methods, and one would be expected to adopt CEMS monitoring methods.

Respondents/affected entities: Industry respondents are stationary, fossil fuel-fired boilers and combustion turbines serving electricity generators subject to the CSAPR and Texas trading programs, as well as non-source entities voluntarily participating in allowance trading activities. Potential state respondents are states that can elect to submit state-determined allowance allocations for sources located in their states.

Respondent's obligation to respond: Industry respondents: Voluntary and mandatory (Sections 110(a) and 301(a) of the Clean Air Act).

Estimated number of respondents: EPA estimates that there would be 188 industry respondents.

Frequency of response: On occasion, quarterly, and annually.

Total estimated additional burden: 1,834 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated additional cost: \$396,520 (per year); includes \$210,571 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to

OMB's Office of Information and Regulatory Affairs via email to OIRA_submission@omb.eop.gov, Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than May 6, 2022. The EPA will respond to any ICR-related comments in the final rule.

2. Information Collection Request for Non-Electric Generating Units

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2705.01. The EPA has filed a copy of the non-EGU ICR in the docket for this rule, and it is briefly summarized here.

ICR No. 2705.01 is a new request and it addresses the burden associated with new regulatory requirements under the proposed rule. Owners and operators of certain non-Electric Generating Unit (non-EGU) industry stationary sources will potentially modify or install new emission controls and associated monitoring systems to meet the nitrogen oxides (NO_x) emission limits of this proposed rule. The burden in this ICR reflects the new monitoring, calibrating, recordkeeping, reporting and testing activities required by industry and the administrative review conducted by the states of the associated industry activities. This information is being collected to assure compliance with the proposed rule. In accordance with the Clean Air Act Amendments of 1990, any monitoring information to be submitted by sources is a matter of public record. Information received and identified by owners or operators as confidential business information (CBI) and approved as CBI by EPA, in accordance with Title 40, Chapter 1, Part 2, Subpart B, shall be maintained appropriately (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

Respondents/affected entities: The respondents/affected entities are the owners/operators of certain non-EGU industry sources in the following industry sectors: Furnaces in Glass and Glass Product Manufacturing; boilers and furnaces in Iron and Steel Mills and Ferroalloy Manufacturing; kilns in Cement and Cement Product Manufacturing; reciprocating internal combustion engines in Pipeline Transportation of Natural Gas; and high-

emitting equipment and large boilers in Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mill.

Respondent's obligation to respond: Voluntary and mandatory. (Sections 110(a) and 301(a) of the Clean Air Act). All data that is recorded or reported by respondents is required by the proposed rule, titled "Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Primary Ozone National Ambient Air Quality Standard: Transport Obligations for non-Electric Generating Units".

Estimated number of respondents: 489.

Frequency of response: The specific frequency for each information collection activity within the non-EGU ICR is shown at the end of the ICR document in the Tables 1–11. In general, the frequency varies across the monitoring, recordkeeping, and reporting activities. Some recordkeeping such as work plan preparation is a one-time activity whereas engine maintenance recordkeeping is conducted quarterly. Reporting frequency is on a quarterly and semi-annual basis.

Total estimated burden: 51,654 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$11,450,000 (average per year); includes \$5,467,000 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information from the EGU ICR and non-EGU ICR, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to OIRA_submission@omb.eop.gov, Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than May 6, 2022. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

The EPA certifies that this proposed action will not have a significant

economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121), provides that whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available an initial regulatory flexibility analysis, unless it certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). Small entities include small businesses, small organizations, and small governmental jurisdictions.

In 2026, EPA identified 34 small entities affected by the proposed rule, and of these 6 small entities may experience costs of greater than 1 percent of revenues. Of the 6 small entities projected to have costs greater than 1 percent of revenues, two of them operate in cost-of-service regions and would generally be able to pass any increased costs along to rate-payers. In EPA's modeling, most of the cost impacts for these small entities and their associated units are driven by lower electricity generation relative to the base case baseline. Specifically, four units reduce their generation by significant amounts, driving the bulk of the costs for all small entities. Finally, EPA's decision to exclude units smaller than 25 MW capacity from the proposed FIP, and exclusion of uncontrolled units smaller than 100 MW from backstop emission rate limits has already significantly reduced the burden on small entities by reducing the number of affected small entity-owned units. Further, in 2026 for non-EGUs, there are five small entities, and one small entity is estimated to have a cost-to-sales impact of 1.3 percent of their revenues.

The EPA has determined that an insignificant number of small entities potentially affected by the proposed rule will have compliance costs greater than 1 percent of annual revenues during the compliance period. EPA has concluded that there will be no significant economic impact on a substantial number of small entities (No SISNOSE) for this proposed rule overall. Details of this analysis are presented in Chapter 6 of the RIA, which is in the public docket.

D. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and will not significantly or uniquely affect small governments. Note

that we expect the proposed rule to potentially have an impact on only one category of government-owned entities (municipality-owned entities). This analysis does not examine potential indirect economic impacts associated with the proposed rule, such as employment effects in industries providing fuel and pollution control equipment, or the potential effects of electricity price increases on government entities. For more information on the estimated impact on government entities, refer to the RIA, which is in the public docket.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. If finalized, this proposed action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed action has tribal implications. However, it would neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

The EPA proposes to make a finding that interstate transport of ozone precursor emissions from 26 upwind states (Alabama, Arkansas, California, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming) is significantly contributing to downwind nonattainment or interfering with maintenance of the 2015 ozone NAAQS in other states, based on projected nitrogen oxides (NO_x) emissions in the 2023 ozone season. EPA is proposing to issue FIP requirements to eliminate interstate transport of ozone precursors from these 26 states that significantly contributes to nonattainment or interferes with maintenance of the NAAQS in other states. Under CAA section 301(d)(4), EPA proposes to extend FIP requirements to apply in Indian country located within the upwind geography of the proposed rule, including Indian reservation lands and other areas of Indian country over which EPA or a tribe has demonstrated that a tribe has jurisdiction. EPA's proposed extension is described further above in Section IV.C.2., *Application of Rule in Indian Country and Necessary*

or Appropriate Finding. EPA proposes that all existing and new EGU and non-EGU sources that are located in the 301(d) FIP areas within the geographic boundaries of the covered states, and which would be subject to this rule if located within areas subject to state CAA planning authority, should be included in this rule. This proposed action has tribal implication because of the proposed extension of FIP requirements into Indian country and this proposed rule may have additional tribal implications if a new affected EGU or non-EGU is built in Indian country. To EPA's knowledge, only one existing EGU or non-EGU source is located within the 301(d) FIP areas: The Bonanza Power Plant, an EGU source, located on the Uintah and Ouray Reservation, geographically located within the borders of Utah. In general, tribes have a vested interest in how this proposed rule would affect air quality.

In the Revised CSAPR Update, EPA established default procedures for allocating CSAPR NO_x Ozone Season Group 3 allowances ("Group 3 allowances") in amounts equal to each state emissions budget for each control period among the sources in the state for use in complying with the Group 3 trading program. Under the current Group 3 trading programs, reserved allowances are made available generally (but not exclusively³⁴⁸) to "new" units—which for purposes of the Revised CSAPR Update means units commencing commercial operation on or after January 1, 2019—through a "new unit set-aside" established for qualifying units in each state and, if areas of Indian country exist within the state's borders, a separate "Indian country new unit set-aside" for qualifying units in such Indian country. In this rulemaking, EPA is proposing revisions to each step of the three-step allocation process to better address units in Indian country and to better coordinate the unit-level allocation process with the proposed dynamic budget-setting process.

The EPA hosted an environmental justice webinar on October 26, 2021, that was attended by state regulatory authorities, environmental groups, federally recognized tribes, and small business stakeholders. The EPA will also continue to consult with the government of the Ute Indian Tribe of the Uintah and Ouray Reservation and plans to further consult with any other tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this proposed regulation to solicit meaningful and timely input into its development. The EPA plans to issue

tribal consultation letters addressed to 574 tribes in February 2022 after the proposed rule is signed. The EPA will likely facilitate an additional tribal consultation through a webinar before finalizing this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it implements a previously promulgated health-based federal standard. This action's health and risk assessments are contained in Chapter 5 of this RIA. The EPA believes that the ozone-related benefits, PM_{2.5}-related benefits, and CO₂-related benefits from this proposed rule will further improve children's health. Additionally, the ozone exposure analysis in Chapter 7 of the RIA suggests that nationally, children (ages 0–17) will experience at least as great a reduction in ozone exposures as adults (ages 18–64) in 2023 and 2026 under all regulatory alternatives of this proposed rulemaking.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA has prepared a Statement of Energy Effects for the proposed regulatory control alternative as follows. The Agency estimates a 1 percent change in retail electricity prices on average across the contiguous U.S. in 2025, a 7.8 percent reduction in coal-fired electricity generation, a 0.15 percent increase in natural gas-fired electricity generation, and a 3.8 percent increase in renewable electricity generation in 2025 as a result of this proposed rule. EPA projects that utility power sector delivered natural gas prices will change by less than 1 percent in 2025. Details of the estimated energy effects are presented in Chapter 4 of the RIA, which is in the public docket.

I. National Technology Transfer and Advancement Act (NTTAA)

This proposed rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898.³⁴⁹ The documentation for this decision is contained in Section VIII, *Environmental Justice Analytical Considerations and Stakeholder Outreach and Engagement* of this Proposed rule and in Chapter 7, *Environmental Justice Impacts of the RIA*, which is in the public document. The RIA was prepared under E.O. 12866 *Regulatory Planning and Review* for this proposed rule. While the ozone exposure assessment was subject to several limitations, also described in Chapter 7 of the RIA, overall, ozone concentrations under the proposal, more stringent, and less stringent alternatives are predicted to impact demographic groups very similarly in both future years and across both EGUs and non-EGUs.

Therefore, regarding ozone concentrations, EPA does not find evidence of meaningful environmental justice concerns associated with ozone concentrations after imposition of the proposed regulatory action or alternatives under consideration. We also do not find evidence that any potential environmental justice concerns related to ozone would be meaningfully exacerbated in the regulatory alternatives under consideration, compared to the baseline. Importantly, the action described in this proposed rule is expected to lower ozone in many areas, including residual ozone nonattainment areas, and thus mitigate some pre-existing health risks of ozone across all populations evaluated.

In addition, the EPA provided the public, including those communities disproportionately impacted by the burdens of pollution, opportunities for meaningful engagement with the EPA on this action. A summary of outreach activities conducted by the Agency and what was heard from communities is provided in section VIII of this proposed rule.

K. Determinations Under CAA Section 307(b)(1) and (d)

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that

petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of “nationally applicable regulations promulgated, or final action taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, but “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” For locally or regionally applicable final actions, the CAA reserves to EPA complete discretion whether to invoke the exception in (ii).

This proposed action, if finalized, would be “nationally applicable” within the meaning of CAA section 307(b)(1). In the alternative, to the extent a court finds this action to be locally or regionally applicable, the Administrator proposes to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1).³⁵⁰

This proposed action, if finalized, will implement the good neighbor provision in 26 states, spanning 8 EPA regions and 10 federal judicial circuits. The proposed action applies a uniform, nationwide analytical method and interpretation of CAA section 110(a)(2)(D)(i)(I) across these states, and the proposed rule is based on a common core of legal, technical, and policy determinations (as explained in further detail in the following paragraph). For these reasons, this proposed action is nationally applicable.

Alternatively, for these same reasons, the Administrator is exercising the discretion afforded to him by the CAA and hereby finds that this proposed action is based on multiple determinations of nationwide scope or effect for purposes of CAA section 307(b)(1).³⁵¹ Specifically, the proposed rule is based on a common core of statutory and case law analysis, factual

³⁵⁰ In proposing to invoke the exception by making and publishing a finding that this final action is based on a determination of nationwide scope or effect, the Administrator is taking into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit’s authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

³⁵¹ In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator’s determination that the “nationwide scope or effect” exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.A.N. 1402–03.

findings, and policy determinations concerning the transport of ozone-precursor pollutants from the different states subject to it, as well as the impacts of those pollutants and the impacts of options to address those pollutants in yet other states. In this proposed action, EPA is applying its 4-step analytic framework to implement the good neighbor provision across these states, using a consistent set of policy and analytical determinations. The proposed determinations include a nationally consistent definition of receptors at Step 1 and findings identifying downwind nonattainment and maintenance receptors; the application of a nationally consistent contribution threshold at Step 2 to determine which states are linked to those receptors and should be further evaluated at Step 3; the use of a nationally consistent multi-factor test at Step 3 to determine which upwind-state contributions to nonattainment and maintenance receptors are “significant” and must be eliminated; and the proposed implementation at Step 4 of a nationally consistent set of emissions control strategies through emissions budgets and an integrated interstate emissions trading program for EGUs, a nationally consistent set of other compliance requirements for EGUs, and a nationally consistent set of enforceable emissions limits and associated compliance requirements for certain non-EQU sources in several industrial sectors across 23 states. Finally, the technical, scientific, and engineering information in support of these proposed determinations relies on a nationally consistent set of air quality modeling analyses and other nationally consistent analytical methods, as set forth elsewhere in this proposed rule and in the relevant supporting documents in the docket for this proposed rule.

Therefore, pursuant to CAA section 307(b), any petitions for review of this action, if and when it is finalized, must be filed in the D.C. Circuit within 60 days from the date such final action is published in the **Federal Register**.

This action is subject to the provisions of section 307(d). CAA section 307(d)(1)(B) provides that section 307(d) applies to, among other things, “the promulgation or revision of an implementation plan by the Administrator under [CAA section 110(c)].” 42 U.S.C. 7407(d)(1)(B). This action, among other things, proposes new federal implementation plans pursuant to the authority of section 110(c). To the extent any portion of this rulemaking, if finalized, is not expressly identified under section 307(d)(1)(B),

the Administrator determines that the provisions of section 307(d) apply to such final action. *See* CAA section 307(d)(1)(V) (the provisions of section 307(d) apply to “such other actions as the Administrator may determine”).

List of Subjects

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Sulfur dioxide.

40 CFR Part 75

Environmental protection, Administrative practice and procedure, Air pollution control, Continuous emission monitoring, Electric power plants, Incorporation by reference, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 78

Environmental protection, Administrative practice and procedure, Air pollution control, Electric power plants, Nitrogen oxides, Ozone, Particulate matter, Sulfur dioxide.

40 CFR Part 97

Environmental protection, Administrative practice and procedure, Air pollution control, Electric power plants, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Michael Regan,

Administrator.

For the reasons stated in the preamble, parts 52, 75, 78, and 97 of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

■ 2. Amend § 52.38 by:

- a. In paragraph (a)(1), removing “(NO_x), except” and adding in its place “(NO_x) for sources meeting the applicability criteria set forth in that subpart, except”;
- b. In paragraph (a)(4) introductory text, removing “State’s sources, and” and adding in its place “State, and”;

- c. In table 1 to paragraph (a)(4)(i)(B), revising the entry for “2025 and any year thereafter”;
- d. In paragraph (a)(5) introductory text, removing “State (but not sources in any Indian country within the borders of the State), regulations” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, regulations”;
- e. In table 2 to paragraph (a)(5)(i)(B), revising the entry for “2025 and any year thereafter”;
- f. In paragraph (a)(5)(iv), removing “Indian country within the borders of the State” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority”;
- g. In paragraph (a)(5)(v), removing “Indian country within the borders of the State, the” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority, the”;
- h. Revising paragraphs (a)(6) and (a)(7)(ii);
- i. In paragraph (a)(8)(iii), removing “State (but not sources in any Indian country within the borders of the State):” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority:”;
- j. In paragraph (b)(1), removing “year, except” and adding in its place “year) for sources meeting the applicability criteria set forth in those subparts, except”;
- k. Redesignating paragraphs (b)(2)(i) and (ii) as paragraphs (b)(2)(i)(A) and (B), respectively, redesignating paragraphs (b)(2)(iii) and (iv) as paragraphs (b)(2)(ii)(A) and (B), respectively, and redesignating paragraph (b)(2)(v) as paragraph (b)(2)(iii)(A);
- l. In newly redesignated paragraph (b)(2)(ii)(A), removing “Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin.” and adding in its place “Towa and Kansas.”;
- m. Adding paragraphs (b)(2)(ii)(C) and (b)(2)(iii)(B) and (C);
- n. In paragraph (b)(3) introductory text, removing “or (ii)”;
- o. Revising paragraph (b)(4) introductory text;
- p. In table 3 to paragraph (b)(4)(ii)(B), revising the entry for “2025 and any year thereafter”;
- q. Revising paragraph (b)(5) introductory text;
- r. In table 4 to paragraph (b)(5)(ii)(B), revising the entry for “2025 and any year thereafter”;
- s. In paragraph (b)(5)(v), removing “Indian country within the borders of

- the State” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority”;
- t. In paragraph (b)(5)(vi), removing “Indian country within the borders of the State, the” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority, the”;
- u. In paragraph (b)(7) introductory text, removing “(b)(2)(iii) or (iv)” and adding in its place “(b)(2)(ii)”;
- v. Revising paragraph (b)(8) introductory text;
- w. In paragraph (b)(8)(i), adding “and” after the semicolon;
- x. Removing and reserving paragraph (b)(8)(ii);
- y. Revising paragraph (b)(8)(iii)(A);
- z. In table 5 to paragraph (b)(8)(iii)(B), revising the entry for “2025 and any year thereafter”;
- aa. In paragraph (b)(8)(iv), removing “(b)(8)(i), (ii), or (iii)” and adding in its place “(b)(8)(i) or (iii)” each time it appears;
- bb. Revising paragraph (b)(9) introductory text;
- cc. Removing and reserving paragraph (b)(9)(ii);
- dd. Revising paragraph (b)(9)(iii)(A);
- ee. In table 6 to paragraph (b)(9)(iii)(B), revising the entry for “2025 and any year thereafter”;
- ff. In paragraph (b)(9)(vi), removing “Indian country within the borders of the State” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority”;
- gg. Revising paragraph (b)(9)(vii);
- hh. In paragraph (b)(9)(viii), removing “(b)(9)(i), (ii), or (iii)” and adding in its place “(b)(9)(i) or (iii)”;
- ii. Revising paragraphs (b)(10) introductory text, (b)(10)(i) and (ii), (b)(10)(v)(A) and (B), (b)(11) introductory text, (b)(11)(iii) introductory text, (b)(11)(iii)(A) introductory text, and (b)(11)(iii)(B);
- jj. Removing and reserving paragraph (b)(11)(iii)(C);
- kk. Revising paragraph (b)(11)(iii)(D);
- ll. In paragraph (b)(11)(iv), removing “paragraphs (b)(11)(iii)(B) and (C)” and adding in its place “paragraph (b)(11)(iii)(B)”;
- mm. Revising paragraphs (b)(12) introductory text, (b)(12)(iii) introductory text, (b)(12)(iii)(A) introductory text, and (b)(12)(iii)(B);
- nn. Removing and reserving paragraph (b)(12)(iii)(C);
- oo. Revising paragraphs (b)(12)(iii)(D) and (b)(12)(vi) and (vii);
- pp. In paragraph (b)(12)(viii), removing “paragraphs (b)(12)(iii)(B) and (C)” and adding in its place “paragraph (b)(12)(iii)(B)”;

- qq. Revising paragraphs (b)(13) introductory text and (b)(13)(i);
- rr. In paragraph (b)(13)(ii), removing “(b)(9)(ii) or”;
- ss. In paragraph (b)(14)(i)(F), removing “§ 97.825(b)” and adding in its place “§§ 97.806(c)(2) and (3) and 97.825(b)”;
- tt. In paragraph (b)(14)(i)(G), removing “§ 97.826(e)” and adding in its place “§ 97.826(f)”;
- uu. Revising paragraphs (b)(14)(ii) and (b)(14)(iii) introductory text;
- vv. In paragraph (b)(14)(iii)(D), removing “and” after the semicolon;
- ww. In paragraph (b)(14)(iii)(E), removing “(b)(2)(iv) of this section.”

- and adding in its place “(b)(2)(ii)(B) of this section);”;
- xx. Adding paragraphs (b)(14)(iii)(F) and (G);
- yy. In paragraph (b)(15)(iii), removing “State (but not sources in any Indian country within the borders of the State):” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority:”;
- zz. In paragraph (b)(16)(i)(B), removing “§ 97.804(a) and (b) or”;
- aaa. Revising paragraph (b)(16)(i)(C);
- bbb. Redesignating paragraph (b)(16)(ii) as paragraph (b)(16)(ii)(A), and in the newly redesignated

- paragraph, removing “(b)(2)(iv)” and adding in its place “(b)(2)(ii)(B)”;
- ccc. Adding paragraph (b)(16)(ii)(B); and
- ddd. Revising paragraphs (b)(17)(i) through (iii).

The revisions and additions read as follows:

§ 52.38 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of nitrogen oxides?

- (a) * * *
- (4) * * *
- (i) * * *
- (B) * * *

TABLE 1 TO PARAGRAPH (a)(4)(i)(B)

Year of the control period for which CSAPR NO _x annual allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * *	* * * * *
2025 and any year thereafter	June 1 of the year before the year of the control period.
* * * * *	(B) * * *
(5) * * *	
(i) * * *	

TABLE 2 TO PARAGRAPH (a)(5)(i)(B)

Year of the control period for which CSAPR NO _x annual allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * *	* * * * *
2025 and any year thereafter	June 1 of the year before the year of the control period.
* * * * *	(2) * * *
(6) <i>Withdrawal of CSAPR FIP provisions relating to NO_x annual emissions.</i> Except as provided in paragraph (a)(7) of this section, following promulgation of an approval by the Administrator of a State’s SIP revision as correcting the SIP’s deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a)(1), (a)(2)(i), and (a)(3) and (4) of this section for sources in the State and Indian country within the borders of the State, the provisions of paragraph (a)(2)(i) of this section will no longer apply to sources in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority, unless the Administrator’s approval of the SIP revision is partial or conditional, and will continue to apply to sources in areas of Indian country within the borders of the State not subject to the State’s SIP authority, provided that if the CSAPR Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the	(i) * * *
State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State’s obligation unless provided otherwise in the Administrator’s approval of the SIP revision.	(C) The provisions of subpart EEEEE of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2017 through 2022 only, except as provided in paragraph (b)(14)(iii) of this section: Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin.
(7) * * *	(iii) * * *
(ii) Notwithstanding the provisions of paragraph (a)(6) of this section, if, at the time of any approval of a State’s SIP revision under this section, the Administrator has already started recording any allocations of CSAPR NO _x Annual allowances under subpart AAAAA of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State’s SIP revision.	(B) The provisions of subpart GGGGG of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2023 and each subsequent year: Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin.
* * * * *	(C) The provisions of subpart GGGGG of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to
(b) * * *	

emissions occurring on and after [EFFECTIVE DATE OF FINAL RULE] and in each subsequent year: Delaware, Minnesota, Nevada, Utah, and Wyoming.

* * * * *

(4) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR NO_x Ozone Season Group 1 Trading Program.* A State listed in paragraph (b)(2)(i)(A) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified

provisions of subpart BBBBB of part 97 of this chapter for the State, and not substantively replacing any other provisions, as follows:

- (i) * * *
(B) * * *

TABLE 3 TO PARAGRAPH (b)(4)(ii)(B)

Table with 2 columns: Year of the control period for which CSAPR NOx ozone season Group 1 allowances are allocated or auctioned; Deadline for submission of allocations or auction results to the Administrator. Row: 2025 and any year thereafter June 1 of the year before the year of the control period.

(5) *Full SIP revisions adopting State CSAPR NO_x Ozone Season Group 1 Trading Programs.* A State listed in paragraph (b)(2)(i)(A) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in

* * * * *

the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, regulations that are substantively

identical to the provisions of the CSAPR NO_x Ozone Season Group 1 Trading Program set forth in §§ 97.502 through 97.535 of this chapter, except that the SIP revision:

- (i) * * *
(B) * * *

TABLE 4 TO PARAGRAPH (b)(5)(ii)(B)

Table with 2 columns: Year of the control period for which CSAPR NOx ozone season Group 1 allowances are allocated or auctioned; Deadline for submission of allocations or auction results to the Administrator. Row: 2025 and any year thereafter June 1 of the year before the year of the control period.

(8) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR NO_x Ozone Season Group 2 Trading Program.* A State listed in paragraph (b)(2)(ii) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart EEEEE of part 97 of this chapter for the State, and not

* * * * *

substantively replacing any other provisions, as follows: (iii) * * * (A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_x Ozone Season Group 2 allowances for any such control period not exceeding the amount, under

§§ 97.810(a) and 97.821 of this chapter for the State and such control period, of the CSAPR NO_x Ozone Season Group 2 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO_x Ozone Season Group 2 allowances already allocated and recorded by the Administrator;

- (B) * * *

TABLE 5 TO PARAGRAPH (b)(8)(iii)(B)

Table with 2 columns: Year of the control period for which CSAPR NOx ozone season Group 2 allowances are allocated or auctioned; Deadline for submission of allocations or auction results to the Administrator. Row: 2025 and any year thereafter June 1 of the year before the year of the control period.

(9) *Full SIP revisions adopting State CSAPR NO_x Ozone Season Group 2 Trading Programs.* A State listed in paragraph (b)(2)(ii) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in

* * * * *

paragraphs (b)(1), (b)(2)(ii), and (b)(7) and (8) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, regulations that are substantively identical to the provisions of the CSAPR NO_x Ozone Season Group 2 Trading Program set forth in §§ 97.802 through

97.835 of this chapter, except that the SIP revision:

- (iii) * * *

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_x Ozone Season Group 2 allowances for any such control period not exceeding the amount, under

§§ 97.810(a) and 97.821 of this chapter for the State and such control period, of the CSAPR NO_x Ozone Season Group 2 trading budget minus the sum of the

Indian country new unit set-aside and the amount of any CSAPR NO_x Ozone Season Group 2 allowances already

allocated and recorded by the Administrator; (B) * * *

TABLE 6 TO PARAGRAPH (b)(9)(iii)(B)

Year of the control period for which CSAPR NO _x ozone season Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * 2025 and any year thereafter	* * * * * June 1 of the year before the year of the control period.

* * * * *
(vii) Provided that, if and when any covered unit is located in areas of Indian country within the borders of the State not subject to the State’s SIP authority, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§ 97.802 (definitions of “common designated representative”, “common designated representative’s assurance level”, and “common designated representative’s share”), 97.806(c)(2), and 97.825 of this chapter and the portions of other provisions of subpart EEEEE of part 97 of this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions; and
* * * * *

(10) *State-determined allocations of CSAPR NO_x Ozone Season Group 3 allowances for 2024.* A State listed in paragraph (b)(2)(iii) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR NO_x Ozone Season Group 3 allowance allocation provisions replacing the provisions in § 97.1011(a)(1) of this chapter with regard to the State and the control period in 2024, a list of CSAPR NO_x Ozone Season Group 3 units and the amount of CSAPR NO_x Ozone Season Group 3 allowances allocated to each unit on such list, provided that the list of units and allocations meets the following requirements:

(i) All of the units on the list must be units that are in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority and that commenced commercial operation before January 1, 2021;

(ii) The total amount of CSAPR NO_x Ozone Season Group 3 allowance allocations on the list must not exceed the amount, under § 97.1010 of this chapter for the State and the control period in 2024, of the CSAPR NO_x Ozone Season Group 3 trading budget minus the sum of the new unit set-aside

and Indian country existing unit set-aside;

* * * * *
(v) * * *

(A) By [EFFECTIVE DATE OF FINAL RULE], the State must notify the Administrator electronically in a format specified by the Administrator of the State’s intent to submit to the Administrator a complete SIP revision meeting the requirements of paragraphs (b)(10)(i) through (iv) of this section by September 1, 2023; and

(B) The State must submit to the Administrator a complete SIP revision described in paragraph (b)(10)(v)(A) of this section by September 1, 2023.

(11) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR NO_x Ozone Season Group 3 Trading Program.* A State listed in paragraph (b)(2)(iii) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart GGGGG of part 97 of this chapter for the State, and not substantively replacing any other provisions, as follows:
* * * * *

(iii) The State may adopt, as CSAPR NO_x Ozone Season Group 3 allowance allocation or auction provisions replacing the provisions in § 97.1011(a)(1) of this chapter with regard to the State and the control period in 2025 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO_x Ozone Season Group 3 allowances and may adopt, in addition to the definitions in § 97.1002 of this chapter, one or more definitions that shall apply only to terms as used in the adopted CSAPR NO_x Ozone Season Group 3 allowance allocation or auction provisions, if such methodology—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_x Ozone Season Group 3 allowances for any such control period not exceeding the amount, under §§ 97.1010 and 97.1021 of this chapter

for the State and such control period, of the CSAPR NO_x Ozone Season Group 3 trading budget minus the sum of the new unit set-aside, the Indian country existing unit set-aside, and the amount of any CSAPR NO_x Ozone Season Group 3 allowances already allocated and recorded by the Administrator, plus, if the State adopts regulations expanding applicability to additional units pursuant to paragraph (b)(11)(ii) of this section, an additional amount of CSAPR NO_x Ozone Season Group 3 allowances not exceeding the lesser of:
* * * * *

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_x Ozone Season Group 3 allowances for any such control period to any CSAPR NO_x Ozone Season Group 3 units covered by § 97.1011(a)(1) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO_x Ozone Season Group 3 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by June 1 of the year before the year of such control period; and
* * * * *

(D) Does not provide for any change, after the submission deadlines in paragraph (b)(11)(iii)(B) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart GGGGG of part 97 of this chapter or § 97.526(d) or § 97.826(d) or (e) of this chapter;
* * * * *

(12) *Full SIP revisions adopting State CSAPR NO_x Ozone Season Group 3 Trading Programs.* A State listed in paragraph (b)(2)(iii) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal

Implementation Plan set forth in paragraphs (b)(1), (b)(2)(iii), and (b)(10) and (11) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, regulations that are substantively identical to the provisions of the CSAPR NO_x Ozone Season Group 3 Trading Program set forth in §§ 97.1002 through 97.1035 of this chapter, except that the SIP revision:

* * * * *

(iii) May adopt, as CSAPR NO_x Ozone Season Group 3 allowance allocation provisions replacing the provisions in § 97.1011(a)(1) of this chapter with regard to the State and the control period in 2025 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO_x Ozone Season Group 3 allowances and that—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_x Ozone Season Group 3 allowances for any such control period not exceeding the amount, under §§ 97.1010 and 97.1021 of this chapter for the State and such control period, of the CSAPR NO_x Ozone Season Group 3 trading budget minus the sum of the new unit set-aside, the Indian country existing unit set-aside, and the amount of any CSAPR NO_x Ozone Season Group 3 allowances already allocated and recorded by the Administrator, plus, if the State adopts regulations expanding applicability to additional units pursuant to paragraph (b)(12)(ii) of this section, an additional amount of CSAPR NO_x Ozone Season Group 3 allowances not exceeding the lesser of:

* * * * *

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_x Ozone Season Group 3 allowances for any such control period to any CSAPR NO_x Ozone Season Group 3 units covered by § 97.1011(a)(1) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO_x Ozone Season Group 3 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by June 1 of the year before the year of such control period; and

* * * * *

(D) Does not provide for any change, after the submission deadlines in paragraph (b)(12)(iii)(B) of this section, in the allocations submitted to the

Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart GGGGG of part 97 of this chapter or § 97.526(d) or § 97.826(d) or (e) of this chapter;

* * * * *

(vi) Must not include any of the requirements imposed on any unit in areas of Indian country within the borders of the State not subject to the State's SIP authority in the provisions in §§ 97.1002 through 97.1035 of this chapter and must not include the provisions in §§ 97.1011(a)(2), 97.1012, and 97.1021(g) through (j) of this chapter, all of which provisions will continue to apply under the portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(vii) Provided that, if any covered unit is located in areas of Indian country within the borders of the State not subject to the State's SIP authority before the Administrator's approval of the SIP revision, the SIP revision must exclude the provisions in §§ 97.1002 (definitions of "base CSAPR NO_x Ozone Season Group 3 source", "base CSAPR NO_x Ozone Season Group 3 unit", "common designated representative", "common designated representative's assurance level", and "common designated representative's share"), 97.1006(c)(2), and 97.1025 of this chapter and the portions of other provisions of subpart GGGGG of part 97 of this chapter referencing these sections, and further provided that, if and when any covered unit is located in areas of Indian country within the borders of the State not subject to the State's SIP authority after the Administrator's approval of the SIP revision, the Administrator may modify his or her approval of the SIP revision to exclude these provisions and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions; and

* * * * *

(13) *Withdrawal of CSAPR FIP provisions relating to NO_x ozone season emissions; satisfaction of NO_x SIP Call requirements.* Following promulgation of an approval by the Administrator of a State's SIP revision as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section, paragraphs (b)(1), (b)(2)(ii), and (b)(7) and (8) of this section, or paragraphs (b)(1), (b)(2)(iii), and (b)(10) and (11) of this section for sources in the State and areas of Indian

country within the borders of the State subject to the State's SIP authority—

(i) Except as provided in paragraph (b)(14) of this section, the provisions of paragraph (b)(2)(i), (ii), or (iii) of this section, as applicable, will no longer apply to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, unless the Administrator's approval of the SIP revision is partial or conditional, and will continue to apply to sources in areas of Indian country within the borders of the State not subject to the State's SIP authority, provided that if the CSAPR Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision; and

* * * * *

(14) * * *

(ii) Notwithstanding the provisions of paragraph (b)(13)(i) of this section, if, at the time of any approval of a State's SIP revision under this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 1 allowances under subpart BBBB of part 97 of this chapter, or allocations of CSAPR NO_x Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter, or allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter, to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(iii) Notwithstanding any discontinuation of the applicability of subpart BBBB or EEEEE of part 97 of this chapter to the sources in a State and areas of Indian country within the borders of the State subject to the State's SIP authority with regard to emissions occurring in any control period pursuant to paragraph (b)(2)(i)(B), (b)(2)(ii)(B) or (C), or (b)(13)(i) of this section, the following provisions shall continue to apply with regard to all CSAPR NO_x Ozone Season Group 1 allowances and CSAPR NO_x Ozone Season Group 2 allowances at any time

allocated for any control period to any source or other entity in the State and shall apply to all entities, wherever located, that at any time held or hold such allowances:

* * * * *

(F) The provisions of § 97.826(e) of this chapter (concerning the conversion of amounts of unused CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods before 2023 to different amounts of CSAPR NO_x Ozone Season Group 3 allowances); and

(G) The provisions of § 97.811(e) of this chapter (concerning the recall of CSAPR NO_x Ozone Season Group 2 allowances equivalent in quantity and usability to all CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods after 2022 and recorded in the compliance accounts of sources in States listed in paragraph (b)(2)(ii)(C) of this section).

* * * * *

(16) * * *
(j) * * *

(C) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(9) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(ii), and (b)(7) and (8) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority: Alabama, Indiana, and Missouri.

(ii) * * *

(B) Notwithstanding any provision of subpart EEEEE of part 97 of this chapter or any State's SIP, with regard to any State listed in paragraph (b)(2)(ii)(C) of this section and any control period that begins after December 31, 2022, the Administrator will not carry out any of the functions set forth for the Administrator in subpart EEEEE of part 97 of this chapter, except §§ 97.811(e) and 97.826(c) and (e) of this chapter, or in any emissions trading program provisions in a State's SIP approved under paragraph (b)(8) or (9) of this section.

(17) * * *

(i) For each of the following States, the Administrator has approved a SIP

revision under paragraph (b)(10) of this section as replacing the CSAPR NO_x Ozone Season Group 3 allowance allocation provisions in § 97.1011(a)(1) of this chapter with regard to the State and the control period in 2024: [none].

(ii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(11) of this section as replacing the CSAPR NO_x Ozone Season Group 3 applicability provisions in § 97.1004(a) and (b) or § 97.1004(a)(1) and (2) of this chapter or the CSAPR NO_x Ozone Season Group 2 allowance allocation provisions in § 97.1011(a)(1) of this chapter with regard to the State and the control period in 2025 or any subsequent year: [none].

(iii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(12) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(iii), and (b)(10) and (11) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority: [none].

■ 3. Amend § 52.39 by:

■ a. In paragraph (a), removing "(SO₂), except" and adding in its place "(SO₂) for sources meeting the applicability criteria set forth in those subparts, except";

■ b. In paragraph (e) introductory text, removing "State's sources, and" and adding in its place "State, and";

■ c. In table 1 to paragraph (e)(1)(ii), revising the entry for "2025 and any year thereafter";

■ d. In paragraph (f) introductory text, removing "State (but not sources in any Indian country within the borders of the State), regulations" and adding in its place "State and areas of Indian country within the borders of the State subject to the State's SIP authority, regulations";

■ e. In table 2 to paragraph (f)(1)(ii), revising the entry for "2025 and any year thereafter";

■ f. In paragraph (f)(4), removing "Indian country within the borders of the State" and adding in its place "areas

of Indian country within the borders of the State not subject to the State's SIP authority";

■ g. In paragraph (f)(5), removing "Indian country within the borders of the State, the" and adding in its place "areas of Indian country within the borders of the State not subject to the State's SIP authority, the";

■ h. In paragraph (h) introductory text, removing "State's sources, and" and adding in its place "State, and";

■ i. In table 3 to paragraph (h)(1)(ii), revising the entry for "2025 and any year thereafter";

■ j. In paragraph (i) introductory text, removing "State (but not sources in any Indian country within the borders of the State), regulations" and adding in its place "State and areas of Indian country within the borders of the State subject to the State's SIP authority, regulations";

■ k. In table 4 to paragraph (i)(1)(ii), revising the entry for "2025 and any year thereafter";

■ l. In paragraph (i)(4), removing "Indian country within the borders of the State" and adding in its place "areas of Indian country within the borders of the State not subject to the State's SIP authority";

■ m. In paragraph (i)(5), removing "Indian country within the borders of the State, the" and adding in its place "areas of Indian country within the borders of the State not subject to the State's SIP authority, the";

■ n. Revising paragraphs (j) and (k)(2); and

■ o. In paragraphs (l)(3) and (m)(3), removing "State (but not sources in any Indian country within the borders of the State):" and adding in its place "State and areas of Indian country within the borders of the State subject to the State's SIP authority:".

The revisions read as follows:

§ 52.39 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of sulfur dioxide?

* * * * *

(e) * * *

(1) * * *

(ii) * * *

TABLE 1 TO PARAGRAPH (e)(1)(ii)

Year of the control period for which CSAPR SO ₂ Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2025 and any year thereafter	June 1 of the year before the year of the control period.

* * * * * (ii) * * *
 (f) * * *
 (i) * * *

TABLE 2 TO PARAGRAPH (f)(1)(ii)

Year of the control period for which CSAPR SO ₂ Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * *	* * * * *
2025 and any year thereafter	June 1 of the year before the year of the control period.

* * * * * (ii) * * *
 (h) * * *
 (1) * * *

TABLE 3 TO PARAGRAPH (h)(1)(ii)

Year of the control period for which CSAPR SO ₂ Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * *	* * * * *
2025 and any year thereafter	June 1 of the year before the year of the control period.

* * * * * (ii) * * *
 (i) * * *
 (1) * * *

TABLE 4 TO PARAGRAPH (i)(1)(ii)

Year of the control period for which CSAPR SO ₂ Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * *	* * * * *
2025 and any year thereafter	June 1 of the year before the year of the control period.

* * * * *

(j) *Withdrawal of CSAPR FIP provisions relating to SO₂ emissions.* Except as provided in paragraph (k) of this section, following promulgation of an approval by the Administrator of a State's SIP revision as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (b), (d), and (e) of this section or paragraphs (a), (c)(1), (g), and (h) of this section for sources in the State and Indian country within the borders of the State, the provisions of paragraph (b) or (c)(1) of this section, as applicable, will no longer apply to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, unless the Administrator's approval of the SIP revision is partial or conditional, and will continue to apply to sources in areas of Indian country within the borders of the State not subject to the State's SIP authority, provided that if the CSAPR Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the

State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(k) * * *

(2) Notwithstanding the provisions of paragraph (j) of this section, if, at the time of any approval of a State's SIP revision under this section, the Administrator has already started recording any allocations of CSAPR SO₂ Group 1 allowances under subpart CCCCC of part 97 of this chapter, or allocations of CSAPR SO₂ Group 2 allowances under subpart DDDDD of part 97 of this chapter, to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to such units for each such control period shall continue to apply, unless provided otherwise by

such approval of the State's SIP revision.

* * * * *

■ 4. Add §§ 52.40 through 52.45 to read as follows:

* * * * *

Sec.

- 52.40 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from sources not subject to the CSAPR ozone season trading program?
- 52.41 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Pipeline Transportation of Natural Gas Industry?
- 52.42 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Cement and Concrete Product Manufacturing Industry?
- 52.43 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Iron and Steel Mills and Ferroalloy Manufacturing Industry?

52.44 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Glass and Glass Product Manufacturing Industry?

52.45 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills Industries?

* * * * *

§ 52.40 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from sources not subject to the CSAPR ozone season trading program?

(a) *NO_x ozone season emissions.* This section establishes Federal Implementation Plan requirements for new and existing units in the industries specified in paragraph (b) of this section to eliminate significant contribution to nonattainment, or interference with maintenance, of the 2015 8-hour ozone National Ambient Air Quality Standards in other states pursuant to 42 U.S.C. 7410(a)(2)(D)(i)(I).

(b) *General requirements* (1) The NO_x emissions limitations and associated compliance requirements for the following listed source categories not subject to the CSAPR ozone season trading program constitute the Federal Implementation Plan provisions that relate to emissions of NO_x during the ozone season (defined as May 1 through September 30 of a calendar year):

§ 52.41 for engines in the Pipeline Transportation of Natural Gas Industry, § 52.42 for kilns in the Cement and Concrete Product Manufacturing Industry, § 52.43 for units in the Iron and Steel Mills and Ferroalloy Manufacturing Industry, § 52.44 for units in the Glass and Glass Product Manufacturing Industry, § 52.45 for boilers in Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills.

(2) The provisions of §§ 52.41 through 52.45 of this part apply to sources located in each of the following States, including Indian country located within the borders of such States, beginning in the 2026 ozone season and in each subsequent ozone season: Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

(3) The owner or operator of an affected unit subject to the provisions of §§ 52.40 through 52.45 shall maintain

files of all information (including all reports and notifications) required by these sections recorded in a form suitable and readily available for expeditious inspection and review. The files shall be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At a minimum, the most recent 2 years of data shall be retained on site. The remaining 3 years of data may be retained off site. Such files may be maintained on microfilm, on a computer, on computer floppy disks, on magnetic tape disks, or on microfiche.

§ 52.41 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Pipeline Transportation of Natural Gas Industry?

(a) *Definitions.* All terms not defined herein shall have the meaning given them in the Act and in subpart A of part 60.

Affected unit means an engine meeting the applicability criteria of this section.

Four stroke means any type of engine which completes the power cycle in two crankshaft revolutions, with intake and compression strokes in the first revolution and power and exhaust strokes in the second revolution.

ISO conditions means 288 Kelvin (15 °C), 60 percent relative humidity and 101.3 kilopascals pressure.

Lean burn means any two-stroke or four-stroke spark ignited reciprocating internal combustion engine that does not meet the definition of a rich burn engine.

Nameplate rating means the manufacturer's design maximum capacity in horsepower (hp) at the installation site conditions. Starting from the completion of any physical change in the engine resulting in an increase in the maximum output (in hp) that the engine is capable of producing on a steady state basis and during continuous operation, such increased maximum output shall be as specified by the person conducting the physical change.

Natural gas means a fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) or non-hydrocarbons, composed of at least 70 percent methane by volume or that has a gross calorific value between 35 and 41 megajoules (MJ) per dry standard cubic meter (950 and 1,100 Btu per dry standard cubic foot), that maintains a gaseous state under ISO conditions. Natural gas does not include the following gaseous fuels: Landfill gas, digester gas, refinery gas, sour gas, blast furnace gas, coal-derived

gas, producer gas, coke oven gas, or any gaseous fuel produced in a process which might result in highly variable CO₂ content or heating value.

Natural gas-fired means that greater than or equal to 90% of the engine's heat input, excluding recirculated or recuperated exhaust heat, is derived from the combustion of natural gas.

Operator means any person who operates, controls, or supervises a natural gas-fired engine subject to this regulation and shall include, but not be limited to, any holding company, utility system, or plant manager of such natural gas-fired engine.

Owner means any holder of any portion of the legal or equitable title in a natural gas-fired engine subject to this regulation.

Pipeline transportation of natural gas means the movement of natural gas through an interconnected network of compressors and pipeline components, from field gathering networks near wellheads to end users, including:

(i) The compressor and pipeline network used for field gathering of natural gas from the wellheads for delivery to either processing facilities or connections to pipelines used for intrastate or interstate transportation of the natural gas; and

(ii) The compressor and pipeline network used to transport the natural gas from field gathering networks or processing facilities over a distance (intrastate or interstate) to and from storage facilities, to large natural gas end-users, and to distribution organizations that provide the natural gas to end-users.

Reciprocating internal combustion engine means a reciprocating engine in which power, produced by heat and/or pressure that is developed in the engine combustion chambers by the burning of a mixture of air and fuel, is subsequently converted to mechanical work.

Rich burn means any four-stroke spark ignited reciprocating internal combustion engine where the manufacturer's recommended operating air/fuel ratio divided by the stoichiometric air/fuel ratio at full load conditions is less than or equal to 1.1. Internal combustion engines originally manufactured as rich burn engines but modified with passive emission control technology for nitrogen oxides (NO_x) (such as pre-combustion chambers) will be considered lean burn engines. Existing internal combustion engines where there are no manufacturer's recommendations regarding air/fuel ratio will be considered rich burn engines if the excess oxygen content of

the exhaust at full load conditions is less than or equal to 2 percent.

Spark ignition means a reciprocating internal combustion engine utilizing a spark plug (or other sparking device) to ignite the air/fuel mixture and with operating characteristics significantly similar to the theoretical Otto combustion cycle.

Stoichiometric means the theoretical air-to-fuel ratio required for complete combustion.

Two stroke means a type of reciprocating internal combustion engine which completes the power cycle in a single crankshaft revolution by combining the intake and compression operations into one stroke (one-half revolution) and the power and exhaust operations into a second stroke. This system requires auxiliary exhaust scavenging of the combustion products and inherently runs lean (excess of air) of stoichiometry.

(b) *Applicability.* You are subject to the requirements under this section if you own or operate a new or existing natural gas-fired spark ignition engine with a nameplate rating of 1,000 hp or greater that is used for pipeline transportation of natural gas and is located within any of the States listed in § 52.40(a)(1)(ii), including Indian country located within the borders of any such State(s).

(c) *Emissions limitations.* Beginning with the 2026 ozone season and in each ozone season thereafter, the following emissions limitations must be met. Compliance with the numerical emissions limitations established in this section is based on the average of three 1-hour runs using the testing requirements and procedures in paragraph (d) of this section.

(1) If you own or operate a natural gas fired four stroke rich burn spark ignition engine with a nameplate rating of 1,000 hp or greater than you must meet a nitrogen oxides (NO_x) emissions limits of 1.0 grams per hp-hour (g/hp-hr).

(2) If you own or operate a natural gas fired four stroke lean burn spark ignition engine with a nameplate rating of 1,000 hp or greater than you must meet a NO_x emissions limits of 1.5 g/hp-hr.

(3) If you own or operate a natural gas fired two stroke lean spark ignition engine with a nameplate rating of 1,000 hp or greater than you must meet a NO_x emissions limits of 3.0 g/hp-hr.

(d) *Testing and monitoring requirements* (1) If you are an owner or operator of a natural gas fired spark ignition engine subject to a NO_x emissions limit under paragraph (b) of this section, you must keep a maintenance plan and records of

conducted maintenance and must, to the extent practicable, maintain and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions.

(2) Performance Testing Requirements:

(i) Engines that meet the certification requirements of § 60.4243(a) need not conduct any performance tests, consistent with the requirements of 40 CFR part 60, subpart JJJJ.

(ii) For non-certified engines, the following performance testing requirements apply:

(A) New engines must conduct an initial performance test within six months of engine startup and conduct subsequent performance testing every six months thereafter to demonstrate compliance.

(B) Existing engines must conduct an initial performance test within six months of becoming subject to an emissions limit under paragraph (b) of this section and conduct subsequent performance testing every six months thereafter to demonstrate compliance.

(iii) Performance tests must be conducted in accordance with the applicable reference test methods of 40 CFR part 60, appendix A, any alternative test method approved by EPA as of April 6, 2022 under 40 CFR 59.104(f), 60.8(b)(3), 61.13(h)(1)(ii), 63.7(e)(2)(ii), or 65.158(a)(2) and available at EPA's website (<https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods>), or other methods and procedures approved by EPA through notice-and-comment rulemaking.

(3) If a selective catalytic reduction (SCR) or non-selective catalytic reduction (NSCR) control device is used to reduce emissions:

(i) Monitor the inlet temperature to the catalyst daily and conduct maintenance if the temperature is not within the observed inlet temperature range from the most recent performance test or the temperatures specified by the manufacturer if no performance test was required by this section.

(ii) Measure the pressure drop across the catalyst monthly and conduct maintenance if the pressure drop is greater than 2 inches outside the baseline value established after each semiannual portable analyzer monitoring.

(iii) Engines that are subject to catalyst temperatures and catalyst pressure drop monitoring requirements under 40 CFR part 63, subpart ZZZZ must satisfy the requirements of § 52.41(d)(3).

(4) If you are not using a SCR or NSCR control device to reduce emissions are required to install a continuous parameter monitoring system (CPMS). You must install, operate, and maintain each CPMS according to the requirements in paragraphs (d)(4)(i) through (vi) of this section.

(i) You must prepare a site-specific monitoring plan that addresses the monitoring system design, data collection, and quality assurance and quality control elements outlined in paragraphs (d)(4)(i)(A) through (E) of this section.

(A) The performance criteria and design specifications for the monitoring system equipment, including the sample interface, detector signal analyzer, and data acquisition and calculations.

(B) Sampling interface (e.g., thermocouple) location such that the monitoring system will provide representative measurements.

(C) Equipment performance evaluations, system accuracy audits, or other audit procedures.

(D) Ongoing operation and maintenance procedures in accordance with the requirements of paragraph (d)(1) of this section.

(E) Ongoing recordkeeping and reporting procedures in accordance with the requirements of paragraphs (e) and (f) of this section.

(ii) Install, operate, and maintain each CPMS in continuous operation according to the procedures in your site-specific monitoring plan.

(iii) The CPMS must collect data at least once every 15 minutes.

(iv) For a CPMS for measuring temperature range, the temperature sensor must have a minimum tolerance of 2.8 degrees Celsius (5 degrees Fahrenheit) or 1 percent of the measurement range, whichever is larger.

(v) You must conduct the CPMS equipment performance evaluation, system accuracy audits, or other audit procedures specified in your site-specific monitoring plan at least annually.

(vi) You must conduct a performance evaluation of each CPMS in accordance with your site-specific monitoring plan.

(e) *Recordkeeping requirements* (1) You must keep records of:

(i) Performance tests conducted pursuant to § 52.41(d)(2), including the date, engine settings on the date of the test, and documentation of the methods and results of the testing.

(ii) Catalyst monitoring required by § 52.41(d)(3), if applicable, and any actions taken to address monitored values outside the temperature or pressure drop parameters, including the date and a description of actions taken.

(iii) Parameters monitored pursuant to your site-specific monitoring plan for your CPMS.

(iv) Hours of operation on a daily basis.

(v) Tuning, adjustments, or other combustion process adjustments and the date of the adjustment(s).

(2) Any records required to be maintained by this section that are submitted electronically via the EPA's Compliance and Emissions Data Reporting Interface (CEDRI) may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to the EPA as part of an on-site compliance evaluation.

(f) *Reporting requirements* (1) Within 60 days after the date of completing each performance test required by this section, you must submit the results of the performance test following the procedures specified in paragraphs (f)(1)(i) through (iii):

(i) *Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) at the time of the test.* Submit the results of the performance test to the EPA via the CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section, which can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>). The data must be submitted in a file format generated using the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(ii) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(iii) *Confidential business information (CBI).* Do not use CEDRI to submit information you claim as CBI. Anything submitted using CEDRI cannot later be claimed CBI. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information submitted under paragraphs (f)(1)(i) or (ii) of this section, you must submit a complete file, including information claimed to be

CBI, to the EPA. The file must be generated using the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraphs (f)(1)(i) and (ii). All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(2) If you are the owner or operator of an affected engine, you shall submit a semi-annual report, at least every six months, in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section. The report shall contain the following information:

(i) The name and address of the owner and operator;

(ii) The address of the subject engine;

(iii) Longitude and latitude coordinates of the subject engine;

(iv) Identification of the subject engine;

(v) Statement of compliance with the applicable emission limit under § 52.41(b);

(vi) Statement of compliance regarding the conduct of maintenance and operations in a manner consistent with good air pollution control practices for minimizing emissions;

(vii) The date and results of the performance test conducted pursuant to § 52.41(d);

(viii) If applicable, a statement documenting any change in the operating characteristics of the subject engine; and

(ix) A statement certifying that the information included in the semi-annual report is complete and accurate.

(3) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with that reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (f)(3)(i) through (vii) of this section.

(i) You must have been or will be precluded from accessing CEDRI and submitting a required report within the

time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(ii) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(iii) The outage may be planned or unplanned.

(iv) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(v) You must provide to the Administrator a written description identifying:

(A) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(B) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(C) A description of measures taken or to be taken to minimize the delay in reporting; and

(D) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(vi) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(vii) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(4) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with that reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (f)(4)(i) through (v) of this section.

(i) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (e.g., hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the

affected facility (e.g., large scale power outage).

(ii) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(iii) You must provide to the Administrator:

(A) A written description of the force majeure event;

(B) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(C) A description of measures taken or to be taken to minimize the delay in reporting; and

(D) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(iv) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(v) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

§ 52.42 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Cement and Concrete Product Manufacturing Industry?

(a) *Definitions.* All terms not defined herein shall have the meaning given them in the Act and in subpart A of part 60.

Affected unit means a cement kiln meeting the applicability criteria of this section.

Cement plant means any facility manufacturing cement by either the wet or dry process.

Clinker means the product of a cement kiln from which finished cement is manufactured by milling and grinding.

Cement kiln means an installation, including any associated pre-heater or pre-calciner devices, that produces clinker by heating limestone and other materials to produce Portland cement.

Operating day means a 24-hour period beginning at 12:00 midnight during which the kiln produces clinker at any time.

Rolling average means the weighted average of all data, meeting QA/QC requirements or otherwise normalized, collected during the applicable averaging period. The period of a rolling average stipulates the frequency of data averaging and reporting. To demonstrate compliance with an operating parameter a 30-day rolling average period requires calculation of a new average value each operating day and shall include the average of all the hourly averages of the specific operating parameter. For demonstration of compliance with an emissions limit based on pollutant concentration, a 30-day rolling average is comprised of the average of all the hourly average concentrations over the previous 30 operating days. For demonstration of compliance with an emissions limit based on lbs-pollutant per production unit, the 30-day rolling

average is calculated by summing the hourly mass emissions over the previous 30 operating days, then dividing that sum by the total production during the same period.

(b) *Applicability.* You are subject to the requirements of this section if you own or operate a new or existing cement kiln that emits or has the potential to emit 100 tons per year or more of NO_x and is located within any of the States listed in § 52.40(a)(1)(ii), including Indian country located within the borders of any such State(s).

(c) *Emission limitations* (1) If you own or operate a cement kiln under paragraph (b) of this section you are subject to the NO_x emissions limits in the following table and the NO_x source cap limit under paragraph (c)(2) of this section, beginning with the 2026 ozone season and in each ozone season thereafter.

TABLE 1 TO PARAGRAPH (C)(1)

Kiln type	Proposed NO _x emissions limit (lb/ton of clinker)
Long Wet	4.0
Long Dry	3.0
Preheater	3.8
Precalciner	2.3
Preheater/Precalciner	2.8

(2) The NO_x source cap limit is calculated in accordance with the following equation:

$$CAP2015 \text{ Ozone Transport} = \frac{(KW \times NW) + (KD \times ND)}{\left(2000 \frac{\text{pounds}}{\text{ton}} \times 365 \frac{\text{days}}{\text{year}}\right)}$$

Where:

CAP2015 Ozone Transport = total allowable NO_x emissions from all cement kilns located at one cement plant, in tons per day, on a 30-operating day rolling average basis;

KD = 1.7 pounds NO_x per ton of clinker for dry preheater-precincer or precincer kilns;

KW = 3.4 pounds NO_x per ton of clinker for long wet kilns;

ND = the average annual production in tons of clinker plus one standard deviation for the three most recent calendar years from all dry preheater-precincer or precincer kilns located at one cement plant; and

NW = the average annual production in tons of clinker plus one standard deviation for the three most recent calendar years from all long wet kilns located at one cement plant.

(d) *Testing and monitoring requirements* (1) If you own or operate a cement manufacturing plant subject to the NO_x emissions limits under paragraph (c) of this section you must conduct performance tests, on a semi-annual basis, in accordance with the applicable reference test methods of 40 CFR part 60, Appendix A, any alternative test method approved by EPA as of April 6, 2022 under 40 CFR

59.104(f), 60.8(b)(3), 61.13(h)(1)(ii), 63.7(e)(2)(ii), or 65.158(a)(2) and available at EPA's website (<https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods>), or other methods and procedures approved by EPA through notice-and-comment rulemaking. You must calculate and record the 30-operating day rolling emission rate of NO_x as the total of all hourly emissions data for a cement kiln in the preceding 30 days, divided by the total tons of clinker produced in that kiln during the same 30-operating day period using Equation 6 of 40 CFR 60.64(c)(1), shown in this equation:

$$E_{30D} = k \left(\frac{\sum_{i=1}^n C_i Q_i}{P} \right)$$

Where:

E_{30D} = 30 kiln operating day average emission rate of NO_x , in lbs/ton of clinker.

C_i = Concentration of NO_x for hour i , in ppm.

Q_i = Volumetric flow rate of effluent gas for hour i , where C_i and Q_i are on the same basis (either wet or dry), in scf/hr.

P = 30 days of clinker production during the same time period as the NO_x emissions measured, in tons.

k = Conversion factor, 1.194×10^{-7} for NO_x , in lb/scf/ppm.

n = Number of kiln operating hours over 30 kiln operating days.

(e) *Recordkeeping requirements* (1) If you own or operate a cement manufacturing plant subject to the NO_x emissions limits under paragraph (c) of this section you must retain records of the calculations and measurements as required in paragraph (d) of this section for the 5-year period specified in 52.40(b)(3).

(2) Any records required to be maintained by this section that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to the EPA as part of an on-site compliance evaluation.

(f) *Reporting requirements* (1) Within 60 days after the date of completing each performance test required by this section, you must submit the results of the performance test following the procedures specified in paragraphs (f)(1)(i) through (iii) of this section:

(i) *Data collected using test methods supported by the EPA's ERT as listed on the EPA's ERT website (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) at the time of the test.* Submit the results of the performance test to the EPA via the CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section, which can be accessed through the EPA's CDX (<https://cdx.epa.gov/>). The data must be submitted in a file format generated using the EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on the EPA's ERT website.

(ii) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML

schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(iii) *CBI. Do not use CEDRI to submit information you claim as CBI.* Anything submitted using CEDRI cannot later be claimed CBI. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information submitted under paragraph (f)(1)(i) or (ii) of this section, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated using the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraphs (f)(1)(i) and (ii) of this section. All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(2) If you are the owner or operator of an affected cement kiln, you shall submit a semi-annual, at least every six months, report in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section.

(3) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with that reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (f)(3)(i) through (vii) of this section.

(i) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(ii) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(iii) The outage may be planned or unplanned.

(iv) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(v) You must provide to the Administrator a written description identifying:

(A) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(B) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(C) A description of measures taken or to be taken to minimize the delay in reporting; and

(D) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(vi) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(vii) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(4) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with that reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (f)(4)(i) through (v) of this section.

(i) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (e.g., hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (e.g., large scale power outage).

(ii) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(iii) You must provide to the Administrator:

(A) A written description of the force majeure event;

(B) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(C) A description of measures taken or to be taken to minimize the delay in reporting; and

(D) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(iv) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(v) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

§ 52.43 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Iron and Steel Mills and Ferroalloy Manufacturing Industry?

(a) *Definitions.* All terms not defined herein shall have the meaning given them in the Act and in subpart A of part 60.

Affected unit means any annealing furnace, basic oxygen process furnace, blast furnace, coke oven facility, electric arc furnace, ladle metallurgy furnace, ladle/tundish preheating system, reheat furnace, taconite production kiln, vacuum degasser, and industrial boiler meeting the applicability criteria of this section, and any such unit contained within a BOF Shop meeting the applicability criteria of this section.

Annealing furnace shall mean a furnace used to heat materials at very high temperatures to change their hardness and strength properties.

Basic Oxygen Process Furnace (BOF) shall mean a refractory-lined vessel in which high-purity oxygen is blown under pressure through a bath of molten iron, scrap metal, and fluxes to produce steel. This definition includes both top and bottom blown furnaces, but does not include argon oxygen decarburization furnaces.

Blast furnace means refractory-lined furnaces charged through its top with iron ore pellets (taconite), sinter, flux (limestone and dolomite), and coke in a reducing atmosphere to produce iron.

BOF Shop means the place where steel making operations occur, beginning with the transfer of molten iron (hot metal) from the torpedo car and ending just prior to casting the molten steel, including hot metal transfer, desulfurization, slag skimming, refining in a basic oxygen process furnace, and ladle metallurgy.

BOF Baghouse System means the control system for control of emissions from charging and tapping of the BOFs, including the capture hoods, ductwork and the BOF Baghouse.

Coke means carbon product that is formed by the thermal distillation of coal at high temperatures in the absence of air in coke oven batteries.

Coke Ovens means ovens producing coke for use in blast furnaces.

Day means a calendar day unless expressly stated to be a business day. In computing any period of time for recordkeeping and reporting purposes where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next business day.

Electric Arc Furnace means a furnace equipped with electrodes used to produce carbon steels and alloy steels primarily by recycling ferrous scrap.

Exceedance means a reading in excess of an applicable opacity or emissions limitation.

Ladle Metallurgy Furnace means a furnace used to refine molten steel into specialty grades while keeping the steel in the ladle.

Ladle/Tundish Preheaters means equipment used to preheat ladles or tundishes to minimize temperature drop prior to use in iron or molten steel refinement.

Reheat Furnace means a furnace used to heat steel product to temperatures at which it will be suitable for deformation and further processing.

Steel Production Cycle means the operations conducted within the basic oxygen process furnace shop that are required to produce each batch of steel, including scrap charging, preheating, hot metal charging, primary oxygen blowing, sampling, (vessel turndown and turnup), additional oxygen blowing, tapping, and deslagging. The steel production cycle begins when the scrap is charged to the furnace and ends three minutes after the slag is emptied from the vessel into the slag pot.

Taconite production kiln means a furnace designed to dry and indurate taconite concentrates to create taconite pellets.

Vacuum degasser means a unit operated within an iron and steel facility to expose molten steel at low pressure to remove certain gases during steel refinement.

(b) *Applicability* The requirements of this section apply to each new or existing emissions unit at an iron and steel mill or ferroalloy manufacturing facility that directly emits or has the potential to emit 100 tons per year or more of NO_x, and to each BOF Shop containing two or more such units that collectively emit or have the potential to emit 100 tons per year or more of NO_x, and that is located within any of the States listed in § 52.40(a)(1)(ii), including Indian country located within the borders of any such State(s).

(c) *Emissions Limitations and Requirements.* Beginning with the 2026 ozone season and in each ozone season thereafter, the emissions limitations in the following table must be met on a 3-hour rolling average.

TABLE 1 TO PARAGRAPH (c)

Emission unit	NO _x Emissions standard or control requirement
Blast Furnace	0.03 lb/mmBtu.
Basic Oxygen Process Furnace	0.07 lb/ton steel.
Electric Arc Furnace	0.15 lb/ton steel.
Ladle/tundish Preheaters	0.06 lb/mmBtu.
Reheat furnace	0.05 lb/mmBtu.
Annealing Furnace	0.06 lb/mmBtu.
Vacuum Degasser	0.03 lb/mmBtu.
Ladle Metallurgy Furnace	0.1 lb/ton steel.
Taconite Production Kilns	Install and operate low NO _x burners as required by 2013 and 2016 Minnesota FIPs. 40 CFR § 52.1183.
Coke Ovens (charging)	0.15 lb/ton of coal charged.
Coke Oven push cars and pushing-charging machines (pushing)	0.015 lb/ton of coal pushed.

TABLE 1 TO PARAGRAPH (c)—Continued

Emission unit	NO _x Emissions standard or control requirement
Boilers—Coal, blast furnace gas, and coke oven gas	0.20 lb/mmBtu.
Boilers—Residual oil	0.20 lb/mmBtu.
Boilers—Distillate oil	0.12 lb/mmBtu.
Boilers—Natural gas	0.08 lb/mmBtu.

(d) *Compliance and Monitoring Requirements*—(1) *Compliance Requirements*

(i) Each affected unit identified in Table 1 to paragraph (c) of this section must design, install, maintain, and continuously operate NO_x control devices as necessary to achieve emissions limits set forth in Table 1 to paragraph (c) of this section in a manner consistent with good air pollution control practices as described in 40 CFR 63.6(e).

(A) If you are the owner or operator of an affected unit not identified in paragraph (d)(1)(i)(B) of this section, you must submit to EPA a work plan for each affected unit within 180 days of the effective date of this rule identifying how each affected unit will comply with the emissions limits set forth in Table 1 to paragraph (c) of this section. Each work plan must include identification of the control device selected and the phased construction timeframe by which you will design, install, and consistently operate the device.

(B) For each taconite production kiln affected by this rule, you must install, maintain, and continuously operate low-NO_x burners to reduce existing average NO_x emissions from the facility by 40% during all periods of kiln operation.

(1) If you have already installed low-NO_x burners as required by the 2013 or 2016 Minnesota Regional Haze Federal Implementation Plans,³⁵² then you must submit a report to EPA within 180 days of the effective date of this rule demonstrating that the low-NO_x burner is designed to achieve 40% reduction of kiln NO_x emissions.

(2) If you have not yet installed low-NO_x burners as required by the 2013 or 2016 Minnesota Regional Haze Federal Implementation Plans, then you must submit a work plan identifying the low-NO_x burner selected and the phased construction timeframe by which you will design, install, and consistently operate the burner. Each work plan shall include performance test results obtained within five years of the effective date of this rule to be used as baseline emission testing data providing

the basis for required emission reductions.

(2) *Monitoring Requirements* (i) For each unit identified in Table 1 to paragraph (c) of this section of this rule, you must install, operate, and maintain a NO_x continuous emission monitoring system (CEMS) to monitor compliance with the emissions limits set forth in Table 1 to paragraph (c) of this section. Each CEMS shall be installed and operated in accordance with requirements set forth at 40 CFR part 60, appendix B.

(ii) You must conduct a performance evaluation of each CEMS according to the requirements in 40 CFR 63.8 and according to 40 CFR part 60, appendix B.

(iii) You must notify EPA in writing of your intention to conduct a performance test at least 60 calendar days before the performance test is initially scheduled to begin in accordance with 40 CFR 63.7 (b).

(iv) As specified in 40 CFR 63.8(c)(4)(ii), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. You must have at least two data points, each representing a different 15-minute period within the same hour, to have a valid hour of data.

(v) All CEMS data must be reduced as specified in 40 CFR 63.8(g)(2) and recorded as NO_x in parts per million by volume, dry basis (ppmvd).

(vi) Proper maintenance. You must maintain the CEMS equipment at all times that the unit is operating, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(vii) You must conduct all monitoring in continuous operation at all times that the unit is operating, except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration drift checks and required zero and high-level adjustments). Quality assurance or control activities must be performed according to procedure 1 of 40 CFR part 60, appendix F.

(viii) Data recorded during monitoring malfunctions, associated repairs, out-of-control periods, and required quality

assurance or control activities should not be used for purposes of calculating data averages. You must use all of the data collected from all other periods in assessing compliance. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring equipment to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations constitutes a deviation from the monitoring requirements.

(e) *Recordkeeping requirements* (1) You shall maintain records of the following information for each day the affected unit operates:

(i) Calendar date;

(ii) The average hourly NO_x emission rates measured or predicted;

(iii) The 30-day average NO_x emission rates calculated at the end of each affected unit operating day from the measured or predicted hourly NO_x emission rates for the preceding 30 steam generating unit operating days;

(iv) Identification of the affected unit operating days when the calculated 30-day average NO_x emission rates are in excess of the applicable NO_x emission limit in Table 1 to paragraph (c) of this section with the reasons for such excess emissions as well as a description of corrective actions taken;

(v) Identification of the affected unit operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken;

(vi) Identification of the times when emission data have been excluded from the calculation of average emission rates and the reasons for excluding data;

(vii) Identification of the times when the pollutant concentration exceeded full span of the CEMS;

(ix) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3 in appendix B of 40 CFR part 60; and

(x) Results of daily CEMS drift tests and quarterly accuracy assessments as required under Procedure 1 of 40 CFR part 60, appendix F.

³⁵² <https://archive.epa.gov/reg50air/taconite/web/html/index.html>.

(2) Any records required to be maintained by this section that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to the EPA as part of an on-site compliance evaluation.

(f) *Reporting requirements* (1) Within 180 days of the effective date of this rule, you shall submit a work plan in accordance with requirements set forth in paragraph (d)(1)(i)(A) of this section, including identification of the control device selected and the phased construction timeframe by which you will design, install, and consistently operate the device. For taconite kilns subject to paragraph (d)(1)(i)(B)(2) of this section each work plan shall include performance test results obtained within five years of the effective date of this rule to be used as baseline emission testing data providing the basis for required emission reductions.

(2) By no later than March 30, 2026, each owner/operator of an affected unit shall submit a final report certifying installation of each selected control device has completed. Each such report shall contain dates of final construction and relevant performance testing, where applicable, demonstrating compliance with limits set forth in Table 1 to paragraph (c) of this section.

(3) Within 60 days after the date of completing each performance test required by this section, you must submit the results of the performance test or performance evaluation of the CEMS following the procedures specified in paragraphs (c)(3)(i) through (iii) of this section:

(i) *Data collected using test methods supported by the EPA's ERT as listed on the EPA's ERT website (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) at the time of the test.* Submit the results of the performance test to the EPA via the CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section, which can be accessed through the EPA's CDX (<https://cdx.epa.gov/>). The data must be submitted in a file format generated using the EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on the EPA's ERT website.

(ii) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test must be included as an

attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(iii) *CBI. Do not use CEDRI to submit information you claim as CBI.* Anything submitted using CEDRI cannot later be claimed CBI. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information submitted under paragraph (f)(1)(i) or (ii) of this section, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated using the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraphs (f)(1)(i) and (ii). All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(4) You are required to submit excess emission reports for any excess emissions that occurred during the reporting period. Excess emissions are defined as any calculated 30-day rolling average NO_x emission rate, as determined under paragraph (c)(3)(iii) of this section, that exceeds the applicable emission limit in paragraph (c) of this section. Excess emission reports must be submitted in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section.

(5) If you own or operate an affected unit subject to the continuous monitoring requirements for NO_x under paragraph (d) of this section, you shall submit reports containing the information recorded under paragraph (d) as described in paragraph (e)(6) of this section. Compliance reports for continuous monitoring must be submitted in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section.

(6) If you own or operate an affected unit, you must submit electronic quarterly reports no later than 30 days

after the end of the calendar quarter. The reports shall be accompanied by a certification from the owner or operator indicating whether the affected unit was in compliance with the applicable emission limits and minimum data requirements of this section during the reporting period. These quarterly reports must be submitted in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section.

(7) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with that reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (f)(7)(i) through (vii) of this section.

(i) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(ii) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(iii) The outage may be planned or unplanned.

(iv) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(v) You must provide to the Administrator a written description identifying:

(A) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(B) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(C) A description of measures taken or to be taken to minimize the delay in reporting; and

(D) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(vi) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(vii) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(8) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with that

reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (f)(8)(i) through (v) of this section.

(i) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (e.g., hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (e.g., large scale power outage).

(ii) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(iii) You must provide to the Administrator:

(A) A written description of the force majeure event;

(B) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(C) A description of measures taken or to be taken to minimize the delay in reporting; and

(D) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(iv) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(v) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

§ 52.44 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Glass and Glass Product Manufacturing Industry?

(a) *Definitions.* All terms not defined herein shall have the meaning given them in the Act and in subpart A of part 60.

Affected units means a glass manufacturing furnace meeting the applicability criteria of this section.

All-electric melter means a glass melting furnace in which all the heat

required for melting is provided by electric current from electrodes submerged in the molten glass, although some fossil fuel may be charged to the furnace as raw material only.

Borosilicate recipe means glass product composition of the following approximate ranges of weight proportions: 60 to 80 percent silicon dioxide, 4 to 10 percent total R_2O (e.g., Na_2O and K_2O), 5 to 35 percent boric oxides, and 0 to 13 percent other oxides.

Container glass means glass made of soda-lime recipe, clear or colored, which is pressed and/or blown into bottles, jars, ampoules, and other products listed in Standard Industrial Classification 3221 (SIC 3221).

Experimental furnace means a glass melting furnace with the sole purpose of operating to evaluate glass melting processes, technologies, or glass products. An experimental furnace does not produce glass that is sold (except for further research and development purposes) or that is used as a raw material for nonexperimental furnaces.

Flat glass means glass made of soda-lime recipe and produced into continuous flat sheets and other products listed in SIC 3211.

Glass melting furnace means a unit comprising a refractory vessel in which raw materials are charged, melted at high temperature, refined, and conditioned to produce molten glass. The unit includes foundations, superstructure and retaining walls, raw material charger systems, heat exchangers, melter cooling system, exhaust system, refractory brick work, fuel supply and electrical boosting equipment, integral control systems and instrumentation, and appendages for conditioning and distributing molten glass to forming apparatuses. The forming apparatuses, including the float bath used in flat glass manufacturing and flow channels in wool fiberglass and textile fiberglass manufacturing, are not considered part of the glass melting furnace.

Glass produced means the weight of the glass pulled from the glass melting furnace.

Hand glass melting furnace means a glass melting furnace where the molten glass is removed from the furnace by a glassworker using a blowpipe or a pontil.

Lead recipe means glass product composition of the following ranges of weight proportions: 50 to 60 percent silicon dioxide, 18 to 35 percent lead oxides, 5 to 20 percent total R_2O (e.g., Na_2O and K_2O), 0 to 8 percent total R_2O_3 (e.g., Al_2O_3), 0 to 15 percent total RO (e.g., CaO, MgO), other than lead oxide, and 5 to 10 percent other oxides.

Pressed and blown glass means glass which is pressed, blown, or both, including textile fiberglass, noncontinuous flat glass, noncontainer glass, and other products listed in SIC 3229. It is separated into: Glass of borosilicate recipe, Glass of soda-lime and lead recipes, and Glass of opal, fluoride, and other recipes.

Raw material means minerals, such as silica sand, limestone, and dolomite; inorganic chemical compounds, such as soda ash (sodium carbonate), salt cake (sodium sulfate), and potash (potassium carbonate); metal oxides and other metal-based compounds, such as lead oxide, chromium oxide, and sodium antimonate; metal ores, such as chromite and pyrolusite; and other substances that are intentionally added to a glass manufacturing batch and melted in a glass melting furnace to produce glass. Metals that are naturally-occurring trace constituents or contaminants of other substances are not considered to be raw materials.

Rebricking means cold replacement of damaged or worn refractory parts of the glass melting furnace. Rebricking includes replacement of the refractories comprising the bottom, sidewalls, or roof of the melting vessel; replacement of refractory work in the heat exchanger; replacement of refractory portions of the glass conditioning and distribution system.

Soda-lime recipe means glass product composition of the following ranges of weight proportions: 60 to 75 percent silicon dioxide, 10 to 17 percent total R_2O (e.g., Na_2O and K_2O), 8 to 20 percent total RO but not to include any PbO (e.g., CaO, and MgO), 0 to 8 percent total R_2O_3 (e.g., Al_2O_3), and 1 to 5 percent other oxides.

Textile fiberglass means fibrous glass in the form of continuous strands having uniform thickness.

Wool fiberglass means fibrous glass of random texture, including fiber glass insulation, and other products listed in SIC 3296.

(b) *Applicability* You are subject to the requirements under this section if you own or operate a new or existing glass manufacturing furnace that directly emits or has the potential to emit 100 tons per year or more of NO_x and is located within any of the States listed in § 52.40(a)(1)(ii), including Indian country located within the borders of any such State(s).

(c) *Emissions limitations* If you own or operate an affected unit you are subject to the NO_x emissions limits in the following table beginning with the 2026 ozone season and in each ozone season thereafter:

TABLE 1 TO PARAGRAPH (C)

Furnace type	Proposed NO _x emissions limit (lb/ton of glass produced)
Container Glass Manufacturing Furnace	4.0
Pressed/Blown Glass Manufacturing Furnace or Fiberglass Manufacturing Furnace	4.0
Flat Glass Manufacturing Furnace	9.2

(d) *Testing and Monitoring Requirements* If you own or operate an affected unit you must conduct performance tests, on a semiannual basis, in accordance with the applicable reference test methods of 40 CFR part 60, Appendix A, any alternative test method approved by EPA as of April 6, 2022 under 40 CFR 59.104(f), 60.8(b)(3), 61.13(h)(1)(ii), 63.7(e)(2)(ii), or 65.158(a)(2) and available at EPA's website (<https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods>), or other methods and procedures approved by EPA through notice-and-comment rulemaking. Direct measurement or material balance using good engineering practice shall be used to determine the amount of glass pulled during the performance test. The rate of glass produced is defined as the weight of glass pulled from the affected facility during the performance test divided by the number of hours taken to perform the performance test.

(1) Owners or operators of affected units must calculate and record the 30-operating day rolling emission rate of NO_x as the total of all hourly emissions data for a glass manufacturing furnace in the preceding 30 days, divided by the total tons of glass produced in that furnace during the same 30-operating day period. If a continuous emission monitoring system has not been installed on the affected unit, the owner or operator shall conduct the following steps:

(A) *Step 1:* determine the average pounds of NO_x emitted per hour by averaging three one-hour tests,

(B) *Step 2:* determine the average tons of glass removed per hour during the same time period as the three one-hour tests in step 1,

(C) *Step 3:* divide the average pounds of NO_x emitted per hour determined in step 1 by the average tons of glass removed per hour determined in step 2,

(D) *Step 4:* compare the quotient to the emission limits specified at § 52.44(c)(1).

(2) If a continuous emission monitoring system has been installed on the affected unit, on a daily basis the owner or operator shall conduct the following steps:

(A) *Step 1:* determine the average pounds of NO_x emitted per day,

(B) *Step 2:* determine the tons of glass removed per day,

(C) *Step 3:* divide the average pounds of NO_x emitted per day determined in step (1) by the tons of glass removed per day determined in step (2). The quotient is pounds of NO_x emitted per ton of glass removed; and

(D) *Step 4:* compare the quotient to the emission limit specified at § 52.44(c)(1).

(e) *Recordkeeping requirements* (1) If you own or operate an affected unit, you must retain records of the calculations and measurements as required in paragraph (e) of this section for 5-year period specified in 52.40(b)(3). You must record the results of each inspection and maintenance proposed rule in a logbook (written or electronic format). You shall keep the logbook onsite and make the logbook available to the permitting authority upon request, consistent with the requirements of 40 CFR part 63, subpart SSSSS, § 63.11457(c).

(2) Any records required to be maintained by this section that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to the EPA as part of an on-site compliance evaluation.

(f) *Reporting requirements* (1) Within 60 days after the date of completing each performance test required by this section, you must submit the results of the performance test following the procedures specified in paragraphs (e)(1)(i) through (iii) of this section:

(i) *Data collected using test methods supported by the EPA's ERT as listed on the EPA's ERT website* (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) at the time of the test. Submit the results of the performance test to the EPA via the CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section, which can be accessed through the EPA's CDX (<https://cdx.epa.gov/>). The data must be submitted in a file format generated using the EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on the EPA's ERT website.

(ii) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(iii) *CBI. Do not use CEDRI to submit information you claim as CBI.* Anything submitted using CEDRI cannot later be claimed CBI. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information submitted under paragraph (f)(1)(i) or (ii) of this section, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated using the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraphs (f)(1)(i) and (ii). All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(2) If you own or operate an affected unit, you shall submit a semi-annual report, at least every six months, in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section.

(3) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with that reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (f)(3)(i) through (vii) of this section.

(i) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(ii) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(iii) The outage may be planned or unplanned.

(iv) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(v) You must provide to the Administrator a written description identifying:

(A) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(B) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(C) A description of measures taken or to be taken to minimize the delay in reporting; and

(D) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(vi) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(vii) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(4) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with that reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (f)(4)(i) through (v) of this section.

(i) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (e.g., hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (e.g., large scale power outage).

(ii) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should

have known, that the event may cause or has caused a delay in reporting.

(iii) You must provide to the Administrator:

(A) A written description of the force majeure event;

(B) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(C) A description of measures taken or to be taken to minimize the delay in reporting; and

(D) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(iv) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(v) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

§ 52.45 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills Industries?

(a) *Definitions.* All terms not defined herein shall have the meaning given them in the Act and in subpart A of 40 CFR part 60.

Affected unit means an industrial boiler meeting the applicability criteria of this section.

(b) *Applicability.* (1) The requirements of this section apply to each new or existing boiler with a design capacity of 100 mmBtu/hr or greater fueled by coal, residual oil, distillate oil, or natural gas, located at sources that are within the Basic Chemical Manufacturing industry (NAICS code 3251xx), the Petroleum and Coal Products Manufacturing industry (NAICS code 3241xx), and the Pulp, Paper, and Paperboard industry (NAICS code 3221xx), and which is located within any of the States listed in § 52.40(a)(1)(ii), including Indian country located within the borders of any such State(s).

(c) *Emission limitations.* Beginning with the 2026 ozone season and in each ozone season thereafter, the following emission limits apply, based on a 30-day averaging time:

(1) Coal-fired industrial boilers: 0.20 lbs NO_x/mmBtu;

(2) Residual oil-fired industrial boilers: 0.15 lbs NO_x/mmBtu;

(3) Distillate oil-fired industrial boilers: 0.12 lbs NO_x/mmBtu; and

(4) Natural gas-fired industrial boilers: 0.08 lbs NO_x/mmBtu.

(d) *Initial compliance testing.* (1) To determine compliance with the

emission limits for NO_x identified in paragraph (c) of this section, you shall conduct an initial compliance test as described in 40 CFR § 60.8 using the continuous system for monitoring NO_x specified by EPA Test Method 7E—Determination of Nitrogen Oxide Emissions from Stationary Sources (Instrumental Analyzer Procedure), as described at 40 CFR part 60, Appendix A-4. In lieu of the timing of the compliance test described in 40 CFR 60.8(a), the test shall be conducted within 90 days from the installation of the pollution control equipment used to comply with the NO_x emission limits in paragraph (c) of this section.

(2) For the initial compliance test, NO_x emissions from the affected unit shall be monitored for 30 successive operating days and the 30-day average emission rate will be used to determine compliance with the NO_x emission limits in paragraph (c) of this section. The 30-day average emission rate is calculated as the average of all hourly emission data recorded by the monitoring system during the 30-day test period.

(e) *Monitoring requirements.* (1) The NO_x emission limits in paragraph (c) of this section shall apply at all times.

(2) You shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring NO_x emissions and either oxygen (O₂) or carbon dioxide (CO₂), unless the Administrator has approved a request from you to use an alternative monitoring technique under paragraph (e)(8) of this section. If you have previously installed a NO_x emission rate CEMS to meet the requirements of 40 CFR part 75 and continue to meet the ongoing requirements of 40 CFR part 75, that CEMS may be used to meet the monitoring requirements of this section.

(3) The CEMS required under paragraph (e)(2) of this section shall be operated and data recorded during all periods of operation of the affected unit except for CEMS breakdowns and repairs. Data shall be recorded during calibration checks and zero and span adjustments.

(4) The 1-hour average NO_x emission rates measured by the CEMS required by paragraph (e)(2) of this section shall be expressed in terms of lbs/mmBtu heat input and shall be used to calculate the average emission rates under 40 CFR 52.45(c).

(5) Following the date on which the initial compliance test is completed, you shall determine compliance with the applicable NO_x emission limit in paragraph (c) of this section on a continuous basis using a 30-day rolling

average emission rate unless the affected unit monitors emissions by means of an alternative monitoring procedure approved pursuant to paragraph (e)(8) of this section. A new 30-day rolling average emission rate is calculated for each operating day as the average of all the hourly NO_x emission data for the preceding 30 operating days.

(6) The procedures under 40 CFR 60.13 shall be followed for installation, evaluation, and operation of the continuous monitoring systems. Additionally, the span value for units combusting coal shall be 1,000 ppm NO_x, and for units combusting oil or gas the span value shall be 500 ppm NO_x. As an alternative to meeting the span value requirements stated above, you may elect to use the NO_x span values determined according to section 2.1.2 in appendix A to 40 CFR part 75.

(7) When NO_x emission data are not obtained because of CEMS breakdowns, repairs, calibration checks and zero and span adjustments, emission data will be obtained by using standby monitoring systems, Method 7 of 40 CFR part 60, Method 7A of 40 CFR part 60, or other approved reference methods to provide emission data for a minimum of 75 percent of the operating hours in each affected unit operating day, in at least 22 out of 30 successive operating days.

(8) Installation of a CEMS for NO_x may be delayed until after the initial performance test has been conducted. If you demonstrate during the performance test that emissions of NO_x are less than 70 percent of the applicable emission limit in paragraph (c) of this section, a CEMS for measuring NO_x emissions is not required. If you demonstrate its boiler emits less than 70 percent of the applicable emission limit chooses to not install a CEMS, you must submit a written request to the Administrator that documents the results of the initial performance test and includes an alternative monitoring procedure that will be used to track compliance with the applicable NO_x emission limit(s) in paragraph (c) of this section. The Administrator will consider the request and, following public notice and comment, may approve the alternative monitoring procedure with or without revision, or disapprove the request. Upon receipt of a disapproved request, you will have one year to install a CEMS in accordance with the provisions for CEMS described in paragraph (e) of this section.

(f) *Recordkeeping requirements* (1) You shall record and maintain records of the amounts of each fuel combusted during each calendar month.

(2) You shall maintain records of the following information for each day the affected unit operates:

(i) Calendar date;

(ii) The average hourly NO_x emission rates (expressed as lbs NO₂/mmBtu heat input) measured or predicted;

(iii) The 30-day average NO_x emission rates calculated at the end of each affected unit operating day from the measured or predicted hourly NO_x emission rates for the preceding 30 steam generating unit operating days;

(iv) Identification of the affected unit operating days when the calculated 30-day average NO_x emission rates are in excess of the applicable NO_x emission limit in paragraph (c) of this section with the reasons for such excess emissions as well as a description of corrective actions taken;

(v) Identification of the affected unit operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken;

(vi) Identification of the times when emission data have been excluded from the calculation of average emission rates and the reasons for excluding data;

(vii) Identification of "F" factor used for calculations, method of determination, and type of fuel combusted;

(viii) Identification of the times when the pollutant concentration exceeded full span of the CEMS;

(ix) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3 in appendix B of 40 CFR part 60; and

(x) Results of daily CEMS drift tests and quarterly accuracy assessments as required under Procedure 1 of 40 CFR part 60, appendix F.

(3) Any records required to be maintained by this section that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to the EPA as part of an on-site compliance evaluation.

(g) *Reporting requirements.* (1) Within 60 days after the date of completing each performance test required by this section, you must submit the results of the performance test or performance evaluation of the CEMS following the procedures specified in paragraphs (g)(i) through (iii) of this section:

(i) *Data collected using test methods supported by the EPA's ERT as listed on the EPA's ERT website* (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>)

at the time of the test. Submit the results of the performance test to the EPA via the CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section, which can be accessed through the EPA's CDX (<https://cdx.epa.gov/>). The data must be submitted in a file format generated using the EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on the EPA's ERT website.

(ii) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(iii) *CBI. Do not use CEDRI to submit information you claim as CBI.* Anything submitted using CEDRI cannot later be claimed CBI. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information submitted under paragraph (g)(1)(i) or (ii) of this section, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated using the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraphs (g)(1)(i) and (ii) of this section. All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(2) You are required to submit excess emission reports for any excess emissions that occurred during the reporting period. Excess emissions are defined as any calculated 30-day rolling average NO_x emission rate, as determined under paragraph (g)(3)(iii) of this section, that exceeds the applicable emission limit in paragraph (c) of this section. Excess emission reports must be

submitted in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section.

(3) If you own or operate an affected unit subject to the continuous monitoring requirements for NO_x under paragraph (e) of this section, you shall submit reports containing the information recorded under paragraph (e) of this section as described in paragraph (g)(2) of this section.

Compliance reports for continuous monitoring must be submitted in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section.

(4) If you own or operate an affected unit, you must submit electronic quarterly reports no later than 30 days after the end of the calendar quarter.

The reports shall be accompanied by a certification from the owner or operator indicating whether the affected unit was in compliance with the applicable emission limits and minimum data requirements of this section during the reporting period. These quarterly reports must be submitted in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section.

(5) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with that reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (g)(5)(i) through (vii) of this section.

(i) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(ii) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(iii) The outage may be planned or unplanned.

(iv) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(v) You must provide to the Administrator a written description identifying:

(A) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(B) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(C) A description of measures taken or to be taken to minimize the delay in reporting; and

(D) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(vi) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(vii) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(6) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with that reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (g)(6)(i) through (v) of this section.

(i) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.*, hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.*, large scale power outage).

(ii) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(iii) You must provide to the Administrator:

(A) A written description of the force majeure event;

(B) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(C) A description of measures taken or to be taken to minimize the delay in reporting; and

(D) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(iv) The decision to accept the claim of force majeure and allow an extension

to the reporting deadline is solely within the discretion of the Administrator.

(v) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

Subpart B—Alabama

■ 5. Amend § 52.54 by revising paragraphs (b)(2) and (3) and adding paragraphs (b)(4) and (5) to read as follows:

§ 52.54 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Alabama and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 through 2022. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Alabama's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(ii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Alabama's SIP.

(3) The owner and operator of each source and each unit located in the State of Alabama and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the

promulgation of an approval by the Administrator of a revision to Alabama's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Alabama's SIP.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, if, at the time of the approval of Alabama's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 2 allowances or CSAPR NO_x Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(5) Notwithstanding the provisions of paragraph (b)(2) of this section, after 2022 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_x Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(e) of this chapter (concerning the conversion of amounts of unused CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods before 2023 to different amounts of CSAPR NO_x Ozone Season Group 3 allowances), and the provisions of § 97.811(e) of this chapter (concerning the recall of CSAPR NO_x Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State and Indian country within the borders of the State for control periods after 2022) shall continue to apply.

Subpart E—Arkansas

- 6. Amend § 52.184 by:

- a. Redesignating paragraphs (a) through (c) as paragraphs (a)(1) through (3);
- b. In newly redesignated paragraph (a)(2), removing “2017 and each subsequent year.” and adding in its place “2017 through 2022.”, and removing the second sentence;
- c. Revising newly redesignated paragraph (a)(3); and
- d. Adding paragraphs (a)(4) and (5) and (b).

The revision and additions read as follows:

§ 52.184 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a) * * *

(3) The owner and operator of each source and each unit located in the State of Arkansas and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Arkansas' State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraph (a)(3) of this section, if, at the time of the approval of Arkansas' SIP revision described in paragraph (a)(3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(5) Notwithstanding the provisions of paragraph (a)(2) of this section, after 2022 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_x Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(e) of this chapter (concerning the conversion of amounts of unused CSAPR NO_x Ozone Season

Group 2 allowances allocated for control periods before 2023 to different amounts of CSAPR NO_x Ozone Season Group 3 allowances), and the provisions of § 97.811(e) of this chapter (concerning the recall of CSAPR NO_x Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State for control periods after 2022) shall continue to apply.

(b) The owner and operator of each source located in the State of Arkansas and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart F—California

- 7. Add § 52.284 to read as follows:

§ 52.284 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner and operator of each source located in the State of California and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart I—Delaware

- 8. Amend § 52.440 by adding paragraph (d) to read as follows:

§ 52.440 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(d)(1) The owner and operator of each source and each unit located in the State of Delaware and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Delaware's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii), except to the extent the Administrator's approval is partial or conditional.

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, if, at the time of the approval of Delaware's SIP

revision described in paragraph (d)(1) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

Subpart O—Illinois

- 9. Amend § 52.731 by:
 - a. In paragraph (b)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and
 - b. Adding paragraph (c).

The addition reads as follows:

§ 52.731 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c) The owner and operator of each source located in the State of Illinois and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart P—Indiana

- 10. Amend § 52.789 by:
 - a. In paragraph (b)(2), removing “(b)(2)(iv), except” and adding in its place “(b)(2)(ii), except”;
 - b. In paragraph (b)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and
 - c. Adding paragraph (c).

The addition reads as follows:

§ 52.789 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c) The owner and operator of each source located in the State of Indiana and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart S—Kentucky

- 11. Amend § 52.940 by:
 - a. In paragraph (b)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and

- b. Adding paragraph (c).

The addition reads as follows:

§ 52.940 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c) The owner and operator of each source located in the State of Kentucky and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart T—Louisiana

- 12. Amend § 52.984 by:
 - a. In paragraph (d)(3), revising the second and third sentences;
 - b. Revising paragraph (d)(4);
 - c. In paragraph (d)(5), adding “and Indian country within the borders of the State” after “in the State”; and
 - d. Adding paragraph (e).

The revision and addition read as follows:

§ 52.984 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(d) * * *

(3) * * * The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Louisiana's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and(b)(2)(iii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Louisiana's SIP.

(4) Notwithstanding the provisions of paragraph (d)(3) of this section, if, at the time of the approval of Louisiana's SIP revision described in paragraph (d)(3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within

the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

* * * * *

(e) The owner and operator of each source located in the State of Louisiana and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart V—Maryland

- 13. Amend § 52.1084 by:
 - a. In paragraph (b)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and
 - b. Adding paragraph (c).

The addition reads as follows:

§ 52.1084 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c) The owner and operator of each source located in the State of Maryland and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart X—Michigan

- 14. Amend § 52.1186 by:
 - a. In paragraph (e)(3), revising the second and third sentences;
 - b. Revising paragraph (e)(4);
 - c. In paragraph (e)(5), adding “and Indian country within the borders of the State” after “in the State”; and
 - d. Adding paragraph (f).

The revision and addition read as follows:

§ 52.1186 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(e) * * *

(3) * * * The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the promulgation of an approval by the

Administrator of a revision to Michigan's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Michigan's SIP.

(4) Notwithstanding the provisions of paragraph (e)(3) of this section, if, at the time of the approval of Michigan's SIP revision described in paragraph (e)(3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

* * * * *

(f) The owner and operator of each source located in the State of Michigan and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart Y—Minnesota

■ 15. Amend § 52.1240 by adding paragraphs (d) and (e) to read as follows:

§ 52.1240 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(d)(1) The owner and operator of each source and each unit located in the State of Minnesota and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to

comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Minnesota's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Minnesota's SIP.

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, if, at the time of the approval of Minnesota's SIP revision described in paragraph (d)(1) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(e) The owner and operator of each source located in the State of Minnesota and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart Z—Mississippi

■ 16. Amend § 52.1284 by:

■ a. Redesignating paragraphs (a) through (c) as paragraphs (a)(1) through (3);

■ b. In newly redesignated paragraph (a)(2), removing "2017 and each subsequent year." and adding in its place "2017 through 2022.", and removing the second and third sentences;

■ c. Revising newly redesignated paragraph (a)(3); and

■ d. Adding paragraphs (a)(4) and (5) and (b).

The revision and additions read as follows:

§ 52.1284 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a) * * *

(3) The owner and operator of each source and each unit located in the State of Mississippi and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Mississippi's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Mississippi's SIP.

(4) Notwithstanding the provisions of paragraph (a)(3) of this section, if, at the time of the approval of Mississippi's SIP revision described in paragraph (a)(3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(5) Notwithstanding the provisions of paragraph (a)(2) of this section, after 2022 the provisions of § 97.826(c) of this chapter (concerning the transfer of

CSAPR NO_x Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(e) of this chapter (concerning the conversion of amounts of unused CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods before 2023 to different amounts of CSAPR NO_x Ozone Season Group 3 allowances), and the provisions of § 97.811(e) of this chapter (concerning the recall of CSAPR NO_x Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State and Indian country within the borders of the State for control periods after 2022) shall continue to apply.

(b) The owner and operator of each source located in the State of Mississippi and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart AA—Missouri

■ 17. Amend § 52.1326 by revising paragraph (b)(2) and (3) and adding paragraphs (b)(4) and (5) and (c) to read as follows:

§ 52.1326 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Missouri and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 through 2022. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Missouri's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(ii), except to the extent the Administrator's approval is partial or conditional.

(3) The owner and operator of each source and each unit located in the State of Missouri and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions

occurring in 2023 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Missouri's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, if, at the time of the approval of Missouri's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 2 allowances or CSAPR NO_x Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(5) Notwithstanding the provisions of paragraph (b)(2) of this section, after 2022 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_x Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(e) of this chapter (concerning the conversion of amounts of unused CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods before 2023 to different amounts of CSAPR NO_x Ozone Season Group 3 allowances), and the provisions of § 97.811(e) of this chapter (concerning the recall of CSAPR NO_x Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State for control periods after 2022) shall continue to apply.

(c) The owner and operator of each source located in the State of Missouri and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart DD—Nevada

■ 18. Add § 52.1492 to read as follows:

§ 52.1492 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source and each unit located in the State of Nevada and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Nevada's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Nevada's SIP.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, if, at the time of the approval of Nevada's SIP revision described in paragraph (a)(1) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(b) The owner and operator of each source located in the State of Nevada and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart FF—New Jersey

- 19. Amend § 52.1584 by:
 - a. In paragraph (e)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and
 - b. Adding paragraph (f).

The addition reads as follows:

§ 52.1584 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(f) The owner and operator of each source located in the State of New Jersey and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart HH—New York

- 20. Amend § 52.1684 by:
 - a. In paragraph (b)(3), revising the second and third sentences;
 - b. Revising paragraph (b)(4);
 - c. In paragraph (b)(5), adding “and Indian country within the borders of the State” after “in the State”; and
 - d. Adding paragraph (c).

The revision and addition read as follows:

§ 52.1684 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(3) * * * The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to New York’s State Implementation Plan (SIP) as correcting the SIP’s deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator’s approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State’s SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to New York’s SIP.

(4) Notwithstanding the provisions of paragraph (b)(3) of this section, if, at the time of the approval of New York’s SIP revision described in paragraph (b)(3) of this section, the Administrator has

already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State’s SIP revision.

* * * * *

(c) The owner and operator of each source located in the State of New York and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart KK—Ohio

- 21. Amend § 52.1882 by:

- a. In paragraph (b)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and
- b. Adding paragraph (c).

The addition reads as follows:

§ 52.1882 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c) The owner and operator of each source located in the State of Ohio and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart LL—Oklahoma

- 22. Amend § 52.1930 by:

- a. Redesignating paragraphs (a) through (c) as paragraphs (a)(1) through (3);
- b. In newly redesignated paragraph (a)(2), removing “2017 and each subsequent year.” and adding in its place “2017 through 2022.”, and removing the second and third sentences;
- c. Revising newly redesignated paragraph (a)(3); and
- c. Adding paragraphs (a)(4) and (5) and (b).

The revision and additions read as follows:

§ 52.1930 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a) * * *

(3) The owner and operator of each source and each unit located in the State of Oklahoma and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Oklahoma’s State Implementation Plan (SIP) as correcting the SIP’s deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator’s approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State’s SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Oklahoma’s SIP.

(4) Notwithstanding the provisions of paragraph (a)(3) of this section, if, at the time of the approval of Oklahoma’s SIP revision described in paragraph (a)(3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State’s SIP revision.

(5) Notwithstanding the provisions of paragraph (a)(2) of this section, after 2022 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_x Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(e) of this chapter (concerning the conversion of amounts

of unused CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods before 2023 to different amounts of CSAPR NO_x Ozone Season Group 3 allowances), and the provisions of § 97.811(e) of this chapter (concerning the recall of CSAPR NO_x Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State and Indian country within the borders of the State for control periods after 2022) shall continue to apply.

(b) The owner and operator of each source located in the State of Oklahoma and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart NN—Pennsylvania

- 23. Amend § 52.2040 by:
 - a. In paragraph (b)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and
 - b. Adding paragraph (c).

The addition reads as follows:

§ 52.2040 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c) The owner and operator of each source located in the State of Pennsylvania and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart RR—Tennessee

- 24. Amend § 52.2240 by:
 - a. In paragraph (e)(2), removing “2017 and each subsequent year.” and adding in its place “2017 through 2022.”, and removing the second sentence;
 - b. Revising paragraph (e)(3); and
 - c. Adding paragraphs (e)(4) and (5).

The revision and additions read as follows:

§ 52.2240 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(e) * * *

(3) The owner and operator of each source and each unit located in the State of Tennessee and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of

part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Tennessee’s State Implementation Plan (SIP) as correcting the SIP’s deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii), except to the extent the Administrator’s approval is partial or conditional.

(4) Notwithstanding the provisions of paragraph (e)(3) of this section, if, at the time of the approval of Tennessee’s SIP revision described in paragraph (e)(3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State’s SIP revision.

(5) Notwithstanding the provisions of paragraph (e)(2) of this section, after 2022 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_x Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(e) of this chapter (concerning the conversion of amounts of unused CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods before 2023 to different amounts of CSAPR NO_x Ozone Season Group 3 allowances), and the provisions of § 97.811(e) of this chapter (concerning the recall of CSAPR NO_x Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State for control periods after 2022) shall continue to apply.

Subpart SS—Texas

- 25. Amend § 52.2283 by:
 - a. In paragraph (d)(2), removing “2017 and each subsequent year.” and adding in its place “2017 through 2022.”, and removing the second and third sentences;
 - b. Revising paragraph (d)(3); and
 - c. Adding paragraphs (d)(4) and (5) and (e).

The revision and additions read as follows:

§ 52.2283 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(d) * * *

(3) The owner and operator of each source and each unit located in the State of Texas and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Texas’ State Implementation Plan (SIP) as correcting the SIP’s deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator’s approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State’s SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Texas’ SIP.

(4) Notwithstanding the provisions of paragraph (d)(3) of this section, if, at the time of the approval of Texas’ SIP revision described in paragraph (d)(3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State’s SIP revision.

(5) Notwithstanding the provisions of paragraph (d)(2) of this section, after 2022 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_x Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(e) of this chapter

(concerning the conversion of amounts of unused CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods before 2023 to different amounts of CSAPR NO_x Ozone Season Group 3 allowances), and the provisions of § 97.811(e) of this chapter (concerning the recall of CSAPR NO_x Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State and Indian country within the borders of the State for control periods after 2022) shall continue to apply.

(e) The owner and operator of each source located in the State of Texas and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart TT—Utah

- 26. Add § 52.2356 to read as follows:

§ 52.2356 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source and each unit located in the State of Utah and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Utah's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Utah's SIP.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, if, at the time of the approval of Utah's SIP revision described in paragraph (a)(1) of

this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(b) The owner and operator of each source located in the State of Utah and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart VV—Virginia

- 27. Amend § 52.2440 by:

- a. In paragraph (b)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and
- b. Adding paragraph (c).

The addition reads as follows:

§ 52.2440 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c) The owner and operator of each source located in the State of Virginia and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart XX—West Virginia

- 28. Amend § 52.2540 by:

- a. In paragraph (b)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and
- b. Adding paragraph (c).

The addition reads as follows:

§ 52.2540 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c) The owner and operator of each source located in the State of West Virginia and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to

emissions occurring in 2026 and each subsequent year.

Subpart YY—Wisconsin

- 29. Amend § 52.2587 by:

- a. In paragraph (e)(2), removing “2017 and each subsequent year.” and adding in its place “2017 through 2022.”, and removing the second and third sentences;
- b. Revising paragraph (e)(3); and
- c. Adding paragraphs (e)(4) and (5) and (f).

The revision and additions read as follows:

§ 52.2587 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(e) * * *

(3) The owner and operator of each source and each unit located in the State of Wisconsin and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Wisconsin's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Wisconsin's SIP.

(4) Notwithstanding the provisions of paragraph (e)(3) of this section, if, at the time of the approval of Wisconsin's SIP revision described in paragraph (e)(3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of subpart

GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(5) Notwithstanding the provisions of paragraph (e)(2) of this section, after 2022 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_x Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(e) of this chapter (concerning the conversion of amounts of unused CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods before 2023 to different amounts of CSAPR NO_x Ozone Season Group 3 allowances), and the provisions of § 97.811(e) of this chapter (concerning the recall of CSAPR NO_x Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State and Indian country within the borders of the State for control periods after 2022) shall continue to apply.

(f) The owner and operator of each source located in the State of Wisconsin and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart ZZ—Wyoming

■ 30. Add § 52.2638 to read as follows:

§ 52.2638 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source and each unit located in the State of Wyoming and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Wyoming State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under

§ 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Wyoming's SIP.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, if, at the time of the approval of Wyoming's SIP revision described in paragraph (a)(1) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(b) The owner and operator of each source located in the State of Wyoming and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, or § 52.45 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

PART 75—CONTINUOUS EMISSION MONITORING

■ 31. The authority citation for part 75 is revised to read as follows:

Authority: 42 U.S.C. 7401–7671q and 7651k note.

■ 32. Amend § 75.72 by:

- a. In paragraph (c)(3), removing “appendix B of this part.” and adding in its place “appendix B to this part.”;
- b. In paragraph (e)(1)(ii), removing “heat input from” and adding in its place “heat input rate to”;
- c. In paragraph (e)(2), removing “appendix D of this part” and adding in its place “appendix D to this part”;
- d. Adding paragraph (f).

The addition reads as follows:

§ 75.72 Determination of NO_x mass emissions for common stack and multiple stack configurations.

* * * * *

(f) *Procedures for apportioning hourly NO_x mass emission rate to the unit*

level. If the owner or operator of a unit determining hourly NO_x mass emission rate at a common stack under this section is subject to a State or federal NO_x mass emissions reduction program under subpart GGGGG of part 97 of this chapter or under a state implementation plan approved pursuant to § 52.38(b)(12) of this chapter, then on and after January 1, 2024, the owner or operator shall apportion the hourly NO_x mass emissions rate at the common stack to each unit using the common stack based on the ratio of the hourly heat input rate for each such unit to the total hourly heat input rate for all such units, in conjunction with the appropriate unit and stack operating times, according to the procedures in section 8.5.3 of appendix F to this part.

* * * * *

■ 33. Amend § 75.73 by:

- a. Revising paragraph (a)(3);
- b. In paragraph (c)(1), removing “No_x emissions” and adding in its place “NO_x emissions”;
- c. Adding a paragraph heading to paragraph (c)(2);
- d. Revising paragraphs (c)(3) and (f)(1) introductory text;
- e. Removing and reserving paragraph (f)(1)(i)(B);
- f. In paragraph (f)(1)(ii)(G), removing “appendix D;” and adding in its place “appendix D to this part.”;
- g. Adding paragraphs (f)(1)(ix) and (x);
- h. Adding a paragraph heading to paragraph (f)(2); and
- i. Revising paragraph (f)(4).

The revisions and addition reads as follows:

§ 75.73 Recordkeeping and reporting.

* * * * *

(a) * * *

(3) For each hour when the unit is operating, NO_x mass emission rate, calculated in accordance with section 8 of appendix F to this part.

* * * * *

(c) * * *

(2) *Monitoring plan updates.* * * *

(3) *Contents of the monitoring plan.*

Each monitoring plan shall contain the information in § 75.53(g)(1) in electronic format and the information in § 75.53(g)(2) in hardcopy format. In addition, to the extent applicable, each monitoring plan shall contain the information in § 75.53(h)(1)(i) and (h)(2)(i) in electronic format and the information in § 75.53(h)(1)(ii) and (h)(2)(ii) in hardcopy format. For units using the low mass emissions excepted methodology under § 75.19, the monitoring plan shall include the additional information in § 75.53(h)(4)(i) and (h)(4)(ii). The monitoring plan also

shall include a seasonal controls indicator and an ozone season fuel-switching flag.

(f) * * *

(1) *Electronic submission.* The designated representative for an affected unit shall electronically report the data and information in this paragraph (f)(1) and in paragraphs (f)(2) and (3) of this section to the Administrator quarterly, unless the unit has been placed in long-term cold storage (as defined in § 72.2 of this chapter). Each electronic report must be submitted to the Administrator within 30 days following the end of each calendar quarter. Each electronic report shall include the information provided in paragraphs (f)(1)(i) through (x) of this section and shall also include the date of report generation. A unit placed into long-term cold storage is exempted from submitting quarterly reports beginning with the calendar quarter following the quarter in which the unit is placed into long-term cold storage, provided that the owner or operator shall submit quarterly reports for the unit beginning with the data from the quarter in which the unit recommences operation (where the initial quarterly report contains hourly data beginning with the first hour of recommenced operation of the unit).

* * * * *

(ix) On and after on January 1, 2024, for a unit subject to subpart GGGGG of part 97 of this chapter or a state implementation plan approved under § 52.38(b)(12) of this chapter and determining NO_x mass emission rate at

a common stack, apportioned hourly NO_x mass emission rate for the unit, lb/hr.

(x) On and after January 1, 2024, for a unit subject to a backstop daily NO_x emission rate under subpart GGGGG of part 97 of this chapter or under a state implementation plan approved under § 52.38(b)(12) of this chapter:

(A) Daily NO_x emissions (lbs) for each day of the reporting period;

(B) Daily heat input (mmBtu) for each day of the reporting period;

(C) Daily average NO_x emission rate (lb/mmBtu, rounded to the nearest thousandth) for each day of the reporting period;

(D) Daily NO_x emissions (lbs) exceeding the applicable backstop daily NO_x emission rate for each day of the reporting period; and

(E) Cumulative NO_x emissions (tons, rounded to the nearest tenth) exceeding the applicable backstop daily NO_x emission rate during the ozone season.

(2) *Verification of identification codes and formulas.* * * *

* * * * *

(4) *Electronic format, method of submission, and explanatory information.* The designated representative shall comply with all of the quarterly reporting requirements in § 75.64(d), (f), and (g).

■ 34. Revise § 75.75 to read as follows:

§ 75.75 Additional ozone season calculation procedures.

(a) The owner or operator of a unit that is required to calculate daily or ozone season heat input shall do so by

summing the unit's hourly heat input determined according to the procedures in this part for all hours in which the unit operated during the day or ozone season.

(b) The owner or operator of a unit that is required to determine daily or ozone season NO_x emission rate (in lbs/mmBtu) shall do so by dividing daily or ozone season NO_x mass emissions (in lbs) determined in accordance with this subpart, by daily or ozone season heat input determined in accordance with paragraph (a) of this section.

■ 35. Amend appendix F to part 75 by:

■ a. Adding section 5.3.3;

■ b. In section 8.1.2, revising the introductory text preceding Equation F-25;

■ c. In section 8.4, revising the introductory text, paragraph (a) introductory text (preceding Equation F-27), and paragraph (b) introductory text (preceding Equation F-27a), and adding paragraph (c);

■ d. In section 8.5.2, removing “the hourly NO_x mass emissions at each unit” and adding in its place “hourly NO_x mass emissions at the common stack.”; and

■ e. Adding section 8.5.3.

The additions and revisions read as follows

Appendix F to Part 75—Conversion Procedures

* * * * *

5.3.3 Calculate total daily heat input for a unit using a flow monitor and diluent monitor to calculate heat input, using the following equation:

$$HI_d = \sum_{h=1}^{24} HI_h t_h$$

(Eq. F-18c)

Where:

HI_d = Total heat input for a unit for the day, mmBtu.

HI_h = Heat input rate for the unit for hour “h” from Equation F-15, F-16, F-17, F-18, F-21a, or F-21b, mmBtu/hr.

t_h = Unit operating time, fraction of the hour (0.00 to 1.00, in equal increments from one hundredth to one quarter of an hour, at the option of the owner or operator).

h = Designation of a particular hour.

* * * * *

8.1.2 If NO_x emission rate is measured at a common stack and heat input rate is measured at the unit level, calculate the hourly heat input rate at the common stack according to the following formula:

* * * * *

8.4 Use the following equations to calculate daily, quarterly, cumulative ozone season, and cumulative year-to-date NO_x mass emissions:

(a) When hourly NO_x mass emissions are reported in lb., use Eq. F-27 to

calculate quarterly, cumulative ozone season, and cumulative year-to-date NO_x mass emissions in tons. * * *

(b) When hourly NO_x mass emission rate is reported in lb/hr, use Eq. F-27a to calculate quarterly, cumulative ozone season, and cumulative year-to-date NO_x mass emissions in tons. * * *

(c) To calculate daily NO_x mass emissions for a unit in pounds, use Eq. F-27b.

$$M_{(NOX)_d} = \sum_{h=1}^{24} E_{(NOX)_h} t_h$$

(Eq. F-27b)

Where:

$M_{(NOX)_d}$ = NO_x mass emissions for a unit for the day, pounds.
 $E_{(NOX)_h}$ = NO_x mass emission rate for the unit for hour “h” from Equation F-24a, F-26a, F-26b, or F-28, lb/hr.
 t_h = Unit operating time, fraction of the hour (0.00 to 1.00, in equal increments from

one hundredth to one quarter of an hour, at the option of the owner or operator).
 h = Designation of a particular hour.
 * * * * *
 8.5.3 Where applicable, the owner or operator of a unit that determines hourly NO_x mass emission rate at a

common stack shall apportion hourly NO_x mass emissions rate to the units using the common stack based on the hourly heat input rate, using Equation F-28:

$$E_{(NOX)_i} = E_{(NOX)CS} \left(\frac{t_{CS}}{t_i} \right) \left[\frac{HI_i t_i}{\sum_{i=1}^n HI_i t_i} \right]$$

(Eq. F-28)

Where:

$E_{(NOX)_i}$ = Apportioned NO_x mass emission rate for unit “i”, lb/hr.
 $E_{(NOX)CS}$ = NO_x mass emission rate at the common stack, lb/hr.
 HI_i = Heat input rate for unit “i”, mmBtu/hr.
 t_i = Operating time for unit “i”, fraction of the hour (0.00 to 1.00, in equal increments from one hundredth to one quarter of an hour, at the option of the owner or operator).
 t_{CS} = Common stack operating time, fraction of the hour (0.00 to 1.00, in equal increments from one hundredth to one quarter of an hour, at the option of the owner or operator).
 n = Number of units using the common stack.
 i = Designation of a particular unit.

(iii) The decision on the transfer of CSAPR NO_x Ozone Season Group 3 allowances under § 97.1023 of this chapter.
 (iv) The decision on the deduction of CSAPR NO_x Ozone Season Group 3 allowances under § 97.1024, § 97.1025, or § 97.1026(d) of this chapter.
 (v) The correction of an error in an Allowance Management System account under § 97.1027 of this chapter.
 (vi) The adjustment of information in a submission and the decision on the deduction and transfer of CSAPR NO_x Ozone Season Group 3 allowances based on the information as adjusted under § 97.1028 of this chapter.
 (vii) The finalization of control period emissions data, including retroactive adjustment based on audit.
 (viii) The approval or disapproval of a petition under § 97.1035 of this chapter.
 * * * * *

and” and adding in its place “(b)(2)(i), and”;
 ■ b. In the definition of “CSAPR NO_x Ozone Season Group 2 Trading Program”, removing “(b)(2)(iii) and (iv), and” and adding in its place “(b)(2)(ii), and”; and
 ■ c. In the definition of “CSAPR NO_x Ozone Season Group 3 Trading Program”, removing “(b)(2)(v), and” and adding in its place “(b)(2)(iii), and”;

PART 78—APPEAL PROCEDURES

■ 36. The authority citation for part 78 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 37. Amend § 78.1 by:

- a. In paragraph (b)(17)(viii), adding “or (e)” after “§ 97.826(d)”;
- b. In paragraph (b)(17)(ix), adding “or (e)” after “§ 97.811(d)”;
- c. Revising paragraph (b)(19).
 The revision reads as follows:

§ 78.1 Purpose and scope.

* * * * *

(b) * * *

(19) Under subpart GGGGG of part 97 of this chapter,

- (i) The decision on the calculation of a state CSAPR NO_x Ozone Season Group 3 trading budget under § 97.1010(a)(3) of this chapter.
- (ii) The decision on the allocation of CSAPR NO_x Ozone Season Group 3 allowances under § 97.1011 or § 97.1012 of this chapter.

PART 97—FEDERAL NO_x BUDGET TRADING PROGRAM, CAIR NO_x AND SO₂ TRADING PROGRAMS, CSAPR NO_x AND SO₂ TRADING PROGRAMS, AND TEXAS SO₂ TRADING PROGRAM

■ 38. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7491, 7601, and 7651, *et seq.*

Subpart AAAAA—CSAPR NO_x Annual Trading Program

§ 97.402 [Amended]

- 39. Amend § 97.402 by:
 - a. In the definition of “CSAPR NO_x Ozone Season Group 1 Trading Program”, removing “(b)(2)(i) and (ii),

§ 97.411 [Amended]

- 40. Amend § 97.411 by:
 - a. In paragraphs (b)(1)(i)(A) and (B), removing “State, in accordance” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, in accordance”;
 - b. In paragraphs (b)(2)(i)(A) and (B), removing “Indian country within the borders of a State, in accordance” and adding in its place “areas of Indian country within the borders of a State not subject to the State’s SIP authority, in accordance”.

§ 97.412 [Amended]

- 41. Amend § 97.412 by:
 - a. In paragraph (a) introductory text, removing “State, the Administrator” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, the Administrator”;
 - b. In paragraphs (a)(3)(iii) and (a)(5), adding “and areas of Indian country within the borders of the State subject to the State’s SIP authority” after “in the State”;
 - c. In paragraph (a)(10), removing “State, is allocated” and adding in its place “State and areas of Indian country

within the borders of the State subject to the State's SIP authority, is allocated";

■ d. In paragraph (b) introductory text, removing "Indian country within the borders of each State, the Administrator" and adding in its place "areas of Indian country within the borders of each State not subject to the State's SIP authority, the Administrator"; and

■ e. In paragraph (b)(5), removing "Indian country within the borders of the State" and adding in its place "areas of Indian country within the borders of the State not subject to the State's SIP authority".

§ 97.421 [Amended]

■ 42. In § 97.421, amend paragraph (f)(2) by removing "2022" and adding in its place "2024", and removing "third" before "year after the year".

§ 97.426 [Amended]

■ 43. In § 97.426, amend paragraph (c) by removing "State (or Indian)" and adding in its place "State (and Indian)".

Subpart BBBBB—CSAPR NO_x Ozone Season Group 1 Trading Program

§ 97.502 [Amended]

■ 44. Amend § 97.502 by:

■ a. In the definition of "CSAPR NO_x Ozone Season Group 1 Trading Program", removing "(b)(2)(i) and (ii), and" and adding in its place "(b)(2)(i), and";

■ b. In the definition of "CSAPR NO_x Ozone Season Group 2 Trading Program", removing "(b)(2)(iii) and (iv), and" and adding in its place "(b)(2)(ii), and";

■ c. In the definition of "CSAPR NO_x Ozone Season Group 3 allowance", adding "or (e)" after "§ 97.826(d)", and adding "or less" after "one ton";

■ d. In the definition of "CSAPR NO_x Ozone Season Group 3 Trading Program", removing "(b)(2)(v), and" and adding in its place "(b)(2)(iii), and"; and

■ e. In the definition of "State", removing "(b)(2)(i) and (ii), and" and adding in its place "(b)(2)(i), and".

§ 97.511 [Amended]

■ 45. Amend § 97.511 by:

■ a. In paragraphs (b)(1)(i)(A) and (B), removing "State, in accordance" and adding in its place "State and areas of Indian country within the borders of the State subject to the State's SIP authority, in accordance"; and

■ b. In paragraphs (b)(2)(i)(A) and (B), removing "Indian country within the borders of a State, in accordance" and adding in its place "areas of Indian country within the borders of a State not

subject to the State's SIP authority, in accordance".

§ 97.512 [Amended]

■ 46. Amend § 97.512 by:

■ a. In paragraph (a) introductory text, removing "State, the Administrator" and adding in its place "State and areas of Indian country within the borders of the State subject to the State's SIP authority, the Administrator";

■ b. In paragraphs (a)(3)(iii) and (a)(5), adding "and areas of Indian country within the borders of the State subject to the State's SIP authority" after "in the State";

■ c. In paragraph (a)(10), removing "State, is allocated" and adding in its place "State and areas of Indian country within the borders of the State subject to the State's SIP authority, is allocated";

■ d. In paragraph (b) introductory text, removing "Indian country within the borders of each State, the Administrator" and adding in its place "areas of Indian country within the borders of each State not subject to the State's SIP authority, the Administrator"; and

■ e. In paragraph (b)(5), removing "Indian country within the borders of the State" and adding in its place "areas of Indian country within the borders of the State not subject to the State's SIP authority".

§ 97.521 [Amended]

■ 47. In § 97.521, amend paragraph (f)(2) by removing "2022" and adding in its place "2024", and removing "third" before "year after the year".

■ 48. Amend § 97.526 by:

■ a. In paragraph (c), removing "State (or Indian)" and adding in its place "State (and Indian)";

■ b. In paragraph (d)(1) introductory text, removing "§ 52.38(b)(2)(i) of this chapter (or)" and adding in its place "§ 52.38(b)(2)(i)(A) of this chapter (and)";

■ c. In paragraph (d)(1)(ii), removing "except a State listed in § 52.38(b)(2)(i)" and adding in its place "listed in § 52.38(b)(2)(ii)";

■ d. In paragraph (d)(1)(iv), removing "§ 52.38(b)(2)(iii) or (iv) of this chapter (or)" and adding in its place "§ 52.38(b)(2)(ii) of this chapter (and)";

■ e. Revising paragraph (d)(2)(i);

■ f. In paragraph (d)(2)(ii), removing "§ 52.38(b)(2)(v) of this chapter (or)" and adding in its place "§ 52.38(b)(2)(iii)(A) of this chapter (and)";

■ g. Adding paragraph (d)(2)(iii);

■ h. In paragraph (e)(1), removing "chapter (or Indian)" and adding in its place "chapter (and Indian)";

■ i. In paragraph (e)(2), removing "§ 52.38(b)(2)(iv) of this chapter (or"

and adding in its place "§ 52.38(b)(2)(iii)(A) of this chapter (and)"; and

■ j. Adding paragraph (e)(3).

The revisions and additions read as follows:

§ 97.526 Banking and conversion.

* * * * *

(d) * * *

(2)(i) Except as provided in paragraphs (d)(2)(ii) and (iii) of this section, after the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section, upon any determination that would otherwise result in the initial recordation of a given number of CSAPR NO_x Ozone Season Group 1 allowances in the compliance account for a source in a State listed in § 52.38(b)(2)(ii) of this chapter (and Indian country within the borders of such a State), the Administrator will not record such CSAPR NO_x Ozone Season Group 1 allowances but instead will allocate and record in such account an amount of CSAPR NO_x Ozone Season Group 2 allowances for the control period in 2017 computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_x Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section.

* * * * *

(iii) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section and § 97.826(e)(1), upon any determination that would otherwise result in the initial recordation of a given number of CSAPR NO_x Ozone Season Group 1 allowances in the compliance account for a source in a State listed in § 52.38(b)(2)(iii)(B) of this chapter (and Indian country within the borders of such a State), the Administrator will not record such CSAPR NO_x Ozone Season Group 1 allowances but instead will allocate and record in such account an amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period in 2023 computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_x Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section and further divided by the conversion factor determined under § 97.826(e)(1)(ii).

* * * * *

(e) * * *

(3) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section and § 97.826(e)(1), the owner or operator of a CSAPR NO_x Ozone Season Group 1

source in a State listed in § 52.38(b)(2)(iii)(B) of this chapter (and Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR NO_x Ozone Season Group 1 allowances for the control period in 2015 or 2016 by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period in 2023 (or any later control period for which the allowance transfer deadline defined in § 97.1002 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_x Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section and further divided by the conversion factor determined under § 97.826(e)(1)(ii).

Subpart CCCCC—CSAPR SO₂ Group 1 Trading Program

§ 97.602 [Amended]

- 49. Amend § 97.602 by:
 - a. In the definition of “CSAPR NO_x Ozone Season Group 1 Trading Program”, removing “(b)(2)(i) and (ii), and” and adding in its place “(b)(2)(i), and”;
 - b. In the definition of “CSAPR NO_x Ozone Season Group 2 Trading Program”, removing “(b)(2)(iii) and (iv), and” and adding in its place “(b)(2)(ii), and”;
 - c. In the definition of “CSAPR NO_x Ozone Season Group 3 Trading Program”, removing “(b)(2)(v), and” and adding in its place “(b)(2)(iii), and”;

§ 97.611 [Amended]

- 50. Amend § 97.611 by:
 - a. In paragraphs (b)(1)(i)(A) and (B), removing “State, in accordance” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, in accordance”; and
 - b. In paragraphs (b)(2)(i)(A) and (B), removing “Indian country within the borders of a State, in accordance” and adding in its place “areas of Indian country within the borders of a State not subject to the State’s SIP authority, in accordance”.

§ 97.612 [Amended]

- 51. Amend § 97.612 by:
 - a. In paragraph (a) introductory text, removing “State, the Administrator” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, the Administrator”;
 - b. In paragraphs (a)(3)(iii) and (a)(5), adding “and areas of Indian country

within the borders of the State subject to the State’s SIP authority” after “in the State”;

- c. In paragraph (a)(10), removing “State, is allocated” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, is allocated”;
- d. In paragraph (b) introductory text, removing “Indian country within the borders of each State, the Administrator” and adding in its place “areas of Indian country within the borders of each State not subject to the State’s SIP authority, the Administrator”; and
- e. In paragraph (b)(5), removing “Indian country within the borders of the State” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority”.

§ 97.621 [Amended]

- 52. In § 97.621, amend paragraph (f)(2) by removing “2022” and adding in its place “2024”, and removing “third” before “year after the year”.

§ 97.626 [Amended]

- 53. In § 97.626, amend paragraph (c) by removing “State (or Indian)” and adding in its place “State (and Indian)”.

Subpart DDDDD—CSAPR SO₂ Group 2 Trading Program

- 54. Amend § 97.702 by:

- a. In the definition of “alternate designated representative”, removing “or CSAPR NO_x Ozone Season Group 2 Trading Program, then” and adding in its place “CSAPR NO_x Ozone Season Group 2 Trading Program, or CSAPR NO_x Ozone Season Group 3 Trading Program, then”;
- b. In the definition of “CSAPR NO_x Ozone Season Group 1 Trading Program”, removing “(b)(2)(i) and (ii), and” and adding in its place “(b)(2)(i), and”;
- c. In the definition of “CSAPR NO_x Ozone Season Group 2 Trading Program”, removing “(b)(2)(iii) and (iv), and” and adding in its place “(b)(2)(ii), and”;
- d. Adding in alphabetical order a definition for “CSAPR NO_x Ozone Season Group 3 Trading Program”;
- e. In the definition of “designated representative”, removing “or CSAPR NO_x Ozone Season Group 2 Trading Program, then” and adding in its place “CSAPR NO_x Ozone Season Group 2 Trading Program, or CSAPR NO_x Ozone Season Group 3 Trading Program, then”.

§ 97.702 Definitions.

* * * * *

CSAPR NO_x Ozone Season Group 3 Trading Program means a multi-state NO_x air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(iii), and (b)(10) through (14) and (17) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(10) or (11) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(12) of this chapter), as a means of mitigating interstate transport of ozone and NO_x.

* * * * *

§ 97.711 [Amended]

- 55. Amend § 97.711 by:
 - a. In paragraphs (b)(1)(i)(A) and (B), removing “State, in accordance” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, in accordance”; and
 - b. In paragraphs (b)(2)(i)(A) and (B), removing “Indian country within the borders of a State, in accordance” and adding in its place “areas of Indian country within the borders of a State not subject to the State’s SIP authority, in accordance”.

§ 97.712 [Amended]

- 56. Amend § 97.712 by:
 - a. In paragraph (a) introductory text, removing “State, the Administrator” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, the Administrator”;
 - b. In paragraphs (a)(3)(iii) and (a)(5), adding “and areas of Indian country within the borders of the State subject to the State’s SIP authority” after “in the State”;
 - c. In paragraph (a)(10), removing “State, is allocated” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, is allocated”;
 - d. In paragraph (b) introductory text, removing “Indian country within the borders of each State, the Administrator” and adding in its place “areas of Indian country within the borders of each State not subject to the State’s SIP authority, the Administrator”; and
 - e. In paragraph (b)(5), removing “Indian country within the borders of the State” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority”.

§ 97.721 [Amended]

■ 57. In § 97.721, amend paragraph (f)(2) by removing “2022” and adding in its place “2024”, and removing “third” before “year after the year”.

§ 97.726 [Amended]

■ 58. In § 97.726, amend paragraph (c) by removing “State (or Indian)” and adding in its place “State (and Indian)”.

§ 97.734 [Amended]

■ 59. In § 97.734, amend paragraph (d)(3) by removing “or CSAPR NO_x Ozone Season Group 2 Trading Program, quarterly” and adding in its place “CSAPR NO_x Ozone Season Group 2 Trading Program, or CSAPR NO_x Ozone Season Group 3 Trading Program, quarterly”.

Subpart EEEEE—CSAPR NO_x Ozone Season Group 2 Trading Program

■ 60. Amend § 97.802 by:

■ a. In the definition of “assurance account”, removing “base CSAPR” and adding in its place “CSAPR”;

■ b. Removing the definitions for “base CSAPR NO_x Ozone Season Group 2 source” and “base CSAPR NO_x Ozone Season Group 2 unit”;

■ c. In the definition of “common designated representative”, removing “base CSAPR” and adding in its place “CSAPR”;

■ d. In the definition of “common designated representative’s assurance level”, revising paragraph (1);

■ e. In the definition of “common designated representative’s share”, removing “base CSAPR” and adding in its place “CSAPR” each time it appears;

■ f. In the definition of “CSAPR NO_x Ozone Season Group 2 Trading Program”, removing “(b)(2)(iii) and (iv), and” and adding in its place “(b)(2)(ii), and”;

■ g. In the definition of “CSAPR NO_x Ozone Season Group 3 allowance”, adding “or (e)” after “§ 97.826(d)”, and adding “or less” after “one ton”;

■ h. In the definition of “CSAPR NO_x Ozone Season Group 3 Trading Program”, removing “(b)(2)(v), and” and adding in its place “(b)(2)(iii), and”;

■ i. In the definition of “State”, removing “(b)(2)(iii) and (iv), and” and adding in its place “(b)(2)(ii), and”.

The revision reads as follows:

§ 97.802 Definitions.

* * * * *

Common designated representative’s assurance level * * *

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR NO_x Ozone Season Group 2 allowances allocated for such control period to the group of one

or more CSAPR NO_x Ozone Season Group 2 units in such State (and such Indian country) having the common designated representative for such control period and the total amount of CSAPR NO_x Ozone Season Group 2 allowances purchased by an owner or operator of such CSAPR NO_x Ozone Season Group 2 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR NO_x Ozone Season Group 2 units in accordance with the CSAPR NO_x Ozone Season Group 2 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(8) or (9) of this chapter, multiplied by the sum of the State NO_x Ozone Season Group 2 trading budget under § 97.810(a) and the State’s variability limit under § 97.810(b) for such control period, and divided by such State NO_x Ozone Season Group 2 trading budget;

* * * * *

§ 97.806 [Amended]

■ 61. In § 97.806, amend paragraphs (c)(2)(i) introductory text, (c)(2)(i)(B), (c)(2)(iii) and (iv), and (c)(3)(ii) by removing “base CSAPR” and adding in its place “CSAPR” each time it appears.

§ 97.810 [Amended]

■ 62. In § 97.810, amend paragraphs (a)(1)(i) through (iii), (a)(2)(i) and (ii), (a)(12)(i) through (iii), (a)(13)(i) and (ii), (a)(17)(i) through (iii), (a)(19)(i) and (ii), (a)(20)(i) through (iii), (a)(23)(i) through (iii), and (b)(1), (2), (12), (13), (17), (19), (20), and (23) by removing “and thereafter” and adding in its place “through 2022”.

■ 63. Amend § 97.811 by:

■ a. In paragraphs (b)(1)(i)(A) and (B), removing “State, in accordance” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, in accordance”;

■ b. In paragraphs (b)(2)(i)(A) and (B), removing “Indian country within the borders of a State, in accordance” and adding in its place “areas of Indian country within the borders of a State not subject to the State’s SIP authority, in accordance”;

■ c. In paragraph (d)(1), removing “§ 52.38(b)(2)(iv) of this chapter (or” and adding in its place “§ 52.38(b)(2)(ii)(B) of this chapter (and”;

■ d. Adding paragraph (e).

The addition reads as follows:

§ 97.811 Timing requirements for CSAPR NO_x Ozone Season Group 2 allowance allocations.

* * * * *

(e) *Recall of CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods after 2022.* (1) Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b) of this chapter, the provisions of this paragraph and paragraphs (e)(2) through (7) of this section shall apply with regard to each CSAPR NO_x Ozone Season Group 2 allowance that was allocated for a control period after 2022 to any unit (including a permanently retired unit qualifying for an exemption under § 97.805) in a State listed in § 52.38(b)(2)(ii)(C) of this chapter (and Indian country within the borders of such a State) and that was initially recorded in the compliance account for the source that includes the unit, whether such CSAPR NO_x Ozone Season Group 2 allowance was allocated pursuant to this subpart or pursuant to a SIP revision approved under § 52.38(b) of this chapter and whether such CSAPR NO_x Ozone Season Group 2 allowance remains in such compliance account or has been transferred to another Allowance Management System account.

(2)(i) For each CSAPR NO_x Ozone Season Group 2 allowance described in paragraph (e)(1) of this section that was allocated for a given control period and initially recorded in a given source’s compliance account, one CSAPR NO_x Ozone Season Group 2 allowance that was allocated for the same or an earlier control period and initially recorded in the same or any other Allowance Management System account must be surrendered in accordance with the procedures in paragraphs (e)(3) and (4) of this section.

(ii)(A) The surrender requirement under paragraph (e)(2)(i) of this section corresponding to each CSAPR NO_x Ozone Season Group 2 allowance described in paragraph (e)(1) of this section initially recorded in a given source’s compliance account shall apply to such source’s current owners and operators, except as provided in paragraph (e)(2)(ii)(B) of this section.

(B) If the owners and operators of a given source as of a given date assumed ownership and operational control of the source through a transaction that did not also provide rights to direct the use or transfer of a given CSAPR NO_x Ozone Season Group 2 allowance described in paragraph (e)(1) of this section with regard to such source (whether recordation of such CSAPR NO_x Ozone Season Group 2 allowance in the source’s compliance account occurred before such transaction or was anticipated to occur after such transaction), then the surrender

requirement under paragraph (e)(2)(i) of this section corresponding to such CSAPR NO_x Ozone Season Group 2 allowance shall apply to the most recent former owners and operators of the source before the occurrence of such a transaction.

(C) The Administrator will not adjudicate any private legal dispute among the owners and operators of a source or among the former owners and operators of a source, including any disputes relating to the requirements to surrender CSAPR NO_x Ozone Season Group 2 allowances for the source under paragraph (e)(2)(i) of this section.

(3)(i) As soon as practicable on or after [EFFECTIVE DATE OF FINAL RULE], the Administrator will send a notification to the designated representative for each source described in paragraph (e)(1) of this section identifying the amounts of CSAPR NO_x Ozone Season Group 2 allowances allocated for each control period after 2022 and recorded in the source's compliance account and the corresponding surrender requirements for the source under paragraph (e)(2)(i) of this section.

(ii) As soon as practicable on or after [15 DAYS AFTER EFFECTIVE DATE OF FINAL RULE], the Administrator will deduct from the compliance account for each source described in paragraph (e)(1) of this section CSAPR NO_x Ozone Season Group 2 allowances eligible to satisfy the surrender requirements for the source under paragraph (e)(2)(i) of this section until all such surrender requirements for the source are satisfied or until no more CSAPR NO_x Ozone Season Group 2 allowances eligible to satisfy such surrender requirements remain in such compliance account.

(iii) As soon as practicable after completion of the deductions under paragraph (e)(3)(ii) of this section, the Administrator will identify for each source described in paragraph (e)(1) of this section the amounts, if any, of CSAPR NO_x Ozone Season Group 2 allowances allocated for each control period after 2022 and recorded in the source's compliance account for which the corresponding surrender requirements under paragraph (e)(2)(i) of this section have not been satisfied and will send a notification concerning such identified amounts to the designated representative for the source.

(iv) With regard to each source for which unsatisfied surrender requirements under paragraph (e)(2)(i) of this section remain after the deductions under paragraph (e)(3)(ii) of this section:

(A) Except as provided in paragraph (e)(3)(iv)(B) of this section, not later

than September 15, 2023, the owners and operators of the source shall hold sufficient CSAPR NO_x Ozone Season Group 2 allowances eligible to satisfy such unsatisfied surrender requirements under paragraph (e)(2)(i) of this section in the source's compliance account.

(B) With regard to any portion of such unsatisfied surrender requirements that apply to former owners and operators of the source pursuant to paragraph (e)(2)(ii)(B) of this section, not later than September 15, 2023, such former owners and operators shall hold sufficient CSAPR NO_x Ozone Season Group 2 allowances eligible to satisfy such portion of the unsatisfied surrender requirements under paragraph (e)(2)(i) of this section either in the source's compliance account or in another Allowance Management System account identified to the Administrator on or before such date in a submission by the authorized account representative for such account.

(C) As soon as practicable on or after September 15, 2023, the Administrator will deduct from the Allowance Management System account identified in accordance with paragraph (e)(3)(iv)(A) or (B) of this section CSAPR NO_x Ozone Season Group 2 allowances eligible to satisfy the surrender requirements for the source under paragraph (e)(2)(i) of this section until all such surrender requirements for the source are satisfied or until no more CSAPR NO_x Ozone Season Group 2 allowances eligible to satisfy such surrender requirements remain in such account.

(v) When making deductions under paragraph (e)(3)(ii) or (iv) of this section to address the surrender requirements under paragraph (e)(2)(i) of this section for a given source:

(A) The Administrator will make deductions to address any surrender requirements with regard to first the 2023 control period and then the 2024 control period.

(B) When making deductions to address the surrender requirements with regard to a given control period, the Administrator will first deduct CSAPR NO_x Ozone Season Group 2 allowances allocated for such given control period and will then deduct CSAPR NO_x Ozone Season Group 2 allowances allocated for each successively earlier control period in sequence.

(C) When deducting CSAPR NO_x Ozone Season Group 2 allowances allocated for a given control period from a given Allowance Management System account, the Administrator will first deduct CSAPR NO_x Ozone Season Group 2 allowances initially recorded in the account under § 97.821 (if the

account is a compliance account) in the order of recordation and will then deduct CSAPR NO_x Ozone Season Group 2 allowances recorded in the account under § 97.526(d) or § 97.823 in the order of recordation.

(4)(i) To the extent the surrender requirements under paragraph (e)(2)(i) of this section corresponding to any CSAPR NO_x Ozone Season Group 2 allowances allocated for a control period after 2022 and initially recorded in a given source's compliance account have not been fully satisfied through the deductions under paragraph (e)(3) of this section, as soon as practicable on or after November 15, 2023, the Administrator will deduct such initially recorded CSAPR NO_x Ozone Season Group 2 allowances from any Allowance Management System accounts in which such CSAPR NO_x Ozone Season Group 2 allowances are held, making such deductions in any order determined by the Administrator, until all such surrender requirements for such source have been satisfied or until all such CSAPR NO_x Ozone Season Group 2 allowances have been deducted, except as provided in paragraph (e)(4)(ii) of this section.

(ii) If no person with an ownership interest in a given CSAPR NO_x Ozone Season Group 2 allowance as of April 30, 2022, was an owner or operator of the source in whose compliance account such CSAPR NO_x Ozone Season Group 2 allowance was initially recorded, was a direct or indirect parent or subsidiary of an owner or operator of such source, or was directly or indirectly under common ownership with an owner or operator of such source, the Administrator will not deduct such CSAPR NO_x Ozone Season Group 2 allowance under paragraph (e)(4)(i) of this section. For purposes of this paragraph, each owner or operator of a source shall be deemed to be a person with an ownership interest in any CSAPR NO_x Ozone Season Group 2 allowance held in that source's compliance account. The limitation established by this paragraph on the deductibility of certain CSAPR NO_x Ozone Season Group 2 allowances under paragraph (e)(4)(i) of this section shall not be construed as a waiver of the surrender requirements under paragraph (e)(2)(i) of this section corresponding to such CSAPR NO_x Ozone Season Group 2 allowances.

(iii) Not less than 45 days before the planned date for any deductions under paragraph (e)(4)(i) of this section, the Administrator will send a notification to the authorized account representative for the Allowance Management System account from which such deductions

will be made identifying the CSAPR NO_x Ozone Season Group 2 allowances to be deducted and the data upon which the Administrator has relied and specifying a process for submission of any objections to such data. Any objections must be submitted to the Administrator not later than 15 days before the planned date for such deductions as indicated in such notification.

(5) To the extent the surrender requirements under paragraph (e)(2)(i) of this section corresponding to any CSAPR NO_x Ozone Season Group 2 allowances allocated for a control period after 2022 and initially recorded in a given source's compliance account have not been fully satisfied through the deductions under paragraphs (e)(3) and (4) of this section:

(i) The persons identified in accordance with paragraph (e)(2)(ii) of this section with regard to such source and each such CSAPR NO_x Ozone Season Group 2 allowance shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Clean Air Act; and

(ii) Each such CSAPR NO_x Ozone Season Group 2 allowance, and each day in such control period, shall constitute a separate violation of this subpart and the Clean Air Act.

(6) The Administrator will record in the appropriate Allowance Management System accounts all deductions of CSAPR NO_x Ozone Season Group 2 allowances under paragraphs (e)(3) and (4) of this section.

(7)(i) Each submission, objection, or other written communication from a designated representative, authorized account representative, or other person to the Administrator under paragraph (e)(2), (3), or (4) of this section shall be sent electronically to the email address *CSAPR@epa.gov*. Each such communication from a designated representative must contain the certification statement set forth in § 97.814(a), and each such communication from the authorized account representative for a general account must contain the certification statement set forth in § 97.820(c)(2)(ii).

(ii) Each notification from the Administrator to a designated representative or authorized account representative under paragraph (e)(3) or (4) of this section will be sent electronically to the email address most recently received by the Administrator for such representative. In any such notification, the Administrator may provide information by means of a reference to a publicly accessible website where the information is available.

§ 97.812 [Amended]

■ 64. Amend § 97.812 by:

■ a. In paragraph (a) introductory text, removing “State, the Administrator” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, the Administrator”;

■ b. In paragraphs (a)(3)(iii) and (a)(5), adding “and areas of Indian country within the borders of the State subject to the State’s SIP authority” after “in the State”;

■ c. In paragraph (a)(10), removing “State, is allocated” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, is allocated”;

■ d. In paragraph (b) introductory text, removing “Indian country within the borders of each State, the Administrator” and adding in its place “areas of Indian country within the borders of each State not subject to the State’s SIP authority, the Administrator”;

■ e. In paragraph (b)(5), removing “Indian country within the borders of the State” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority”.

§ 97.821 [Amended]

■ 65. In § 97.821, amend paragraph (f) by removing “2022” and adding in its place “2024”, and removing “third” before “year after the year”.

§ 97.825 [Amended]

■ 66. In § 97.825, amend paragraphs (a) introductory text, (a)(2), (b)(1)(i), (b)(1)(ii)(A) and (B), (b)(3), (b)(4)(i), (b)(5), (b)(6)(i), (b)(6)(iii) introductory text, and (b)(6)(iii)(A) and (B) by removing “base CSAPR” and adding in its place “CSAPR” each time it appears.

■ 67. Amend § 97.826 by:

■ a. In paragraph (b), removing “(c) or (d)” and adding in its place “(c), (d), or (e)”;

■ b. In paragraph (c), removing “State (or Indian)” and adding in its place “State (and Indian)”;

■ c. In paragraphs (d)(1)(i)(A) and (B), removing “§ 52.38(b)(2)(iv)” and adding in its place “§ 52.38(b)(2)(ii)(B)”;

■ d. Revising paragraph (d)(1)(i)(C);

■ e. In paragraph (d)(1)(ii) introductory text, removing “§ 52.38(b)(2)(v)” and adding in its place “§ 52.38(b)(2)(iii)”;

■ f. Removing and reserving paragraph (d)(1)(iii);

■ g. Revising paragraph (d)(1)(iv) introductory text;

■ h. In paragraphs (d)(1)(iv)(A) and (B), removing “or (d)(1)(iii)(C)”;

■ i. In paragraphs (d)(2)(i) and (d)(3), removing “§ 52.38(b)(2)(v) of this

chapter (or” and adding in its place “§ 52.38(b)(2)(iii) of this chapter (and”;

■ j. Redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e);

■ k. Revising newly redesignated paragraphs (f)(1) and (2); and

■ l. Adding paragraph (f)(3).

The revisions and additions read as follows:

§ 97.826 Banking and conversion.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(C) The full-season CSAPR NO_x Ozone Season Group 3 allowance bank target, computed as the sum for all States listed in § 52.38(b)(2)(iii)(A) of this chapter of the variability limits under § 97.1010(e) for such States for the control period in 2022.

* * * * *

(iv) For the compliance account of each source to which an amount of CSAPR NO_x Ozone Season Group 3 allowances greater than zero is allocated under paragraph (d)(1)(ii)(C) of this section:

* * * * *

(e) Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b)(8) or (9) of this chapter:

(1) By [45 DAYS AFTER EFFECTIVE DATE OF FINAL RULE], the Administrator will temporarily suspend acceptance of CSAPR NO_x Ozone Season Group 2 allowance transfers submitted under § 97.822 and, before resuming acceptance of such transfers, will take the following actions with regard to every general account and every compliance account except a compliance account for a CSAPR NO_x Ozone Season Group 2 source in a State listed in § 52.38(b)(2)(ii)(A) of this chapter (and Indian country within the borders of such a State):

(i) The Administrator will deduct all CSAPR NO_x Ozone Season Group 2 allowances allocated for the control periods in 2017 through 2022 from each such account.

(ii) The Administrator will determine a conversion factor equal to the greater of 1.0000 or the quotient, expressed to four decimal places, of the sum of all CSAPR NO_x Ozone Season Group 2 allowances deducted from all such accounts under paragraph (e)(1)(i) of this section divided by the sum of the variability limits for the control period in 2024 under § 97.1010(e) for all States listed in § 52.38(b)(2)(iii)(B) of this chapter.

(iii) The Administrator will allocate and record in each such account an

amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period in 2023 computed as the quotient, rounded up to the nearest allowance, of the number of CSAPR NO_x Ozone Season Group 2 allowances deducted from such account under paragraph (e)(1)(i) of this section divided by the conversion factor determined under paragraph (e)(1)(ii) of this section, except as provided in paragraph (e)(1)(iv) or (v) of this section.

(iv) Where, pursuant to paragraph (e)(1)(i) of this section, the Administrator deducts CSAPR NO_x Ozone Season Group 2 allowances from the compliance account for a source in a State not listed in § 52.38(b)(2)(iii) of this chapter (and Indian country within the borders of such a State), the Administrator will not record CSAPR NO_x Ozone Season Group 3 allowances in that compliance account but instead will allocate and record the amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period in 2023 computed for such source in accordance with paragraph (e)(1)(iii) of this section in a general account identified by the designated representative for such source, provided that if the designated representative fails to identify such a general account in a submission to the Administrator by [45 DAYS AFTER EFFECTIVE DATE OF FINAL RULE], the Administrator may record such CSAPR NO_x Ozone Season Group 3 allowances in a general account identified or established by the Administrator with the designated representative as the authorized account representative and with the owners and operators of such source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative.

(v)(A) In computing any amounts of CSAPR NO_x Ozone Season Group 3 allowances to be allocated to and recorded in general accounts under paragraph (e)(1)(iii) of this section, the Administrator may group multiple general accounts whose ownership interests are held by the same or related persons or entities and treat the group of accounts as a single account for purposes of such computation.

(B) Following a computation for a group of general accounts in accordance with paragraph (e)(1)(v)(A) of this section, the Administrator will allocate to and record in each individual account in such group a proportional share of the quantity of CSAPR NO_x Ozone Season Group 3 allowances computed for such group, basing such shares on the respective quantities of CSAPR NO_x Ozone Season Group 2

allowances removed from such individual accounts under paragraph (e)(1)(i) of this section.

(C) In determining the proportional shares under paragraph (e)(1)(v)(B) of this section, the Administrator may employ any reasonable adjustment methodology to truncate or round each such share up or down to a whole number and to cause the total of such whole numbers to equal the amount of CSAPR NO_x Ozone Season Group 3 allowances computed for such group of accounts in accordance with paragraph (e)(1)(v)(A) of this section, even where such adjustments cause the numbers of CSAPR NO_x Ozone Season Group 3 allowances allocated to some individual accounts to equal zero.

(2) After the Administrator has carried out the procedures set forth in paragraph (e)(1) of this section, upon any determination that would otherwise result in the initial recordation of a given number of CSAPR NO_x Ozone Season Group 2 allowances in the compliance account for a source in a State listed in § 52.38(b)(2)(iii)(B) of this chapter (and Indian country within the borders of such a State), the Administrator will not record such CSAPR NO_x Ozone Season Group 2 allowances but instead will allocate and record in such account an amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period in 2023 computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_x Ozone Season Group 2 allowances divided by the conversion factor determined under paragraph (e)(1)(ii) of this section.

(f) * * *

(1) Except as provided in paragraph (f)(3) of this section, after the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section, the owner or operator of a CSAPR NO_x Ozone Season Group 2 source in a State listed in § 52.38(b)(2)(iii)(A) of this chapter (and Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR NO_x Ozone Season Group 2 allowances for the control period in a year from 2017 through 2020 by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period in 2021 (or any later control period for which the allowance transfer deadline defined in § 97.1002 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_x Ozone Season Group 2 allowances divided by the conversion factor

determined under paragraph (d)(1)(i)(D) of this section.

(2) Except as provided in paragraph (f)(3) of this section, after the Administrator has carried out the procedures set forth in paragraph (e)(1) of this section, the owner or operator of a CSAPR NO_x Ozone Season Group 2 source in a State listed in § 52.38(b)(2)(iii)(B) of this chapter (and Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR NO_x Ozone Season Group 2 allowances for the control period in a year from 2017 through 2022 by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period in 2023 (or any later control period for which the allowance transfer deadline defined in § 97.1002 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_x Ozone Season Group 2 allowances divided by the conversion factor determined under paragraph (e)(1)(ii) of this section.

(3) CSAPR NO_x Ozone Season Group 3 allowances may not be used to satisfy requirements to surrender CSAPR NO_x Ozone Season Group 2 allowances under § 97.811(d) or (e).

Subpart FFFFF—Texas SO₂ Trading Program

- 68. Amend § 97.902 by:
 - a. In the definition of “alternate designated representative”, removing “Program or CSAPR NO_x Ozone Season Group 2 Trading Program, then” and adding in its place “Program, CSAPR NO_x Ozone Season Group 2 Trading Program, or CSAPR NO_x Ozone Season Group 3 Trading Program, then”;
 - b. In the definition of “CSAPR NO_x Ozone Season Group 2 Trading Program”, removing “(b)(2)(iii) and (iv), and” and adding in its place “(b)(2)(ii), and”;
 - c. Adding in alphabetical order a definition for “CSAPR NO_x Ozone Season Group 3 Trading Program”; and
 - d. In the definition of “designated representative”, removing “Program or CSAPR NO_x Ozone Season Group 2 Trading Program, then” and adding in its place “Program, CSAPR NO_x Ozone Season Group 2 Trading Program, or CSAPR NO_x Ozone Season Group 3 Trading Program, then”.

The addition reads as follows:

§ 97.902 Definitions.

* * * * *

CSAPR NO_x Ozone Season Group 3 Trading Program means a multi-state

NO_x air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(iii), and (b)(10) through (14) and (17) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(10) or (11) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(12) of this chapter), as a means of mitigating interstate transport of ozone and NO_x.

* * * * *

§ 97.921 [Amended]

■ 69. In § 97.921, amend paragraph (b)(2) by removing “2022” and adding in its place “2024”, and removing “third” before “year after the year”.

§ 97.934 [Amended]

■ 70. In § 97.934, amend paragraph (d)(3) by removing “Program or CSAPR NO_x Ozone Season Group 2 Trading Program, quarterly” and adding in its place “Program, CSAPR NO_x Ozone Season Group 2 Trading Program, or CSAPR NO_x Ozone Season Group 3 Trading Program, quarterly”.

Subpart GGGGG—CSAPR NO_x Ozone Season Group 3 Trading Program

■ 71. Amend § 97.1002 by:

- a. Revising the definition of “allocate or allocation”;
- b. In the definition of “allowance transfer deadline”, adding “primary” before “emissions limitation”;
- c. In the definition of “alternate designated representative”, removing “or CSAPR SO₂ Group 1 Trading Program, then” and adding in its place “CSAPR SO₂ Group 1 Trading Program, or CSAPR SO₂ Group 2 Trading Program, then”;
- d. Adding in alphabetical order a definition for “backstop daily NO_x emissions rate”;
- e. In the definition of “common designated representative’s assurance level”, in paragraph (1), removing “§ 97.1010(b)” and adding in its place “§ 97.1010(e)”, and revising paragraph (2);
- f. In the definition of “compliance account”, adding “primary” before “emissions limitation”;
- g. Adding in alphabetical order a definition for “CSAPR NO_x Ozone Season Group 1 Trading Program”;
- h. In the definition of “CSAPR NO_x Ozone Season Group 2 Trading Program”, removing “(b)(2)(iii) and (iv), and” and adding in its place “(b)(2)(ii), and”;
- i. In the definition of “CSAPR NO_x Ozone Season Group 3 allowance”,

adding “or (e)” after “§ 97.826(d)”, and adding “or less” after “one ton”;

- j. In the definition of “CSAPR NO_x Ozone Season Group 3 allowance deduction or deduct CSAPR NO_x Ozone Season Group 3 allowances”, adding “primary” before “emissions limitation”;
- k. In the definition of “CSAPR NO_x Ozone Season Group 3 emissions limitation”, adding “primary” before “emissions limitation”;
- l. Adding in alphabetical order a definition for “CSAPR NO_x Ozone Season Group 3 secondary emissions limitation”;
- m. In the definition of “CSAPR NO_x Ozone Season Group 3 Trading Program”, removing “(b)(2)(v), and” and adding in its place “(b)(2)(iii), and”;
- n. Adding in alphabetical order a definition for “CSAPR SO₂ Group 2 Trading Program”;
- o. In the definition of “designated representative”, removing “or CSAPR SO₂ Group 1 Trading Program, then” and adding in its place “CSAPR SO₂ Group 1 Trading Program, or CSAPR SO₂ Group 2 Trading Program, then”.
- p. In the definition of “excess emissions”, adding “primary” before “emissions limitation”; and
- q. In the definition of “State”, removing “(b)(2)(v), and” and adding in its place “(b)(2)(iii), and”.

The revisions and additions read as follows:

§ 97.1002 Definitions.

* * * * *

Allocate or allocation means, with regard to CSAPR NO_x Ozone Season Group 3 allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart, §§ 97.526(d) and 97.826(d) and (e), and any SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(10), (11), or (12) of this chapter, of the amount of such CSAPR NO_x Ozone Season Group 3 allowances to be initially credited, at no cost to the recipient, to:

- (1) A CSAPR NO_x Ozone Season Group 3 unit;
- (2) A new unit set-aside;
- (3) An Indian country new unit set-aside;
- (4) An Indian country existing unit set-aside; or
- (5) An entity not listed in paragraphs (1) through (4) of this definition;
- (6) Provided that, if the Administrator, State, or permitting authority initially credits, to a CSAPR NO_x Ozone Season Group 3 unit qualifying for an initial credit, a credit in the amount of zero CSAPR NO_x Ozone Season Group 3 allowances, the

CSAPR NO_x Ozone Season Group 3 unit will be treated as being allocated an amount (*i.e.*, zero) of CSAPR NO_x Ozone Season Group 3 allowances.

* * * * *

Backstop daily NO_x emissions rate means an emissions rate limit used in the determination of the CSAPR NO_x Ozone Season Group 3 primary emissions limitation for a CSAPR NO_x Ozone Season Group 3 source in accordance with § 97.1024(b).

* * * * *

Common designated representative’s assurance level * * *

(2) Provided that the allocations of CSAPR NO_x Ozone Season Group 3 allowances for any control period taken into account for purposes of this definition shall exclude any CSAPR NO_x Ozone Season Group 3 allowances allocated for such control period under § 97.526(d) or § 97.826(d) or (e).

* * * * *

CSAPR NO_x Ozone Season Group 1 Trading Program means a multi-state NO_x air pollution control and emission reduction program established in accordance with subpart BBBB of this part and § 52.38(b)(1), (b)(2)(i), and (b)(3) through (5) and (13) through (15) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(5) of this chapter), as a means of mitigating interstate transport of ozone and NO_x.

* * * * *

CSAPR NO_x Ozone Season Group 3 secondary emissions limitation means, for a CSAPR NO_x Ozone Season Group 3 unit to which such a limitation applies under § 97.1025(c)(1) for a control period in a given year, the tonnage of NO_x emissions calculated for the unit in accordance with § 97.1025(c)(2) for such control period.

* * * * *

CSAPR SO₂ Group 2 Trading Program means a multi-state SO₂ air pollution control and emission reduction program established in accordance with subpart DDDDD of this part and § 52.39(a), (c), (g) through (k), and (m) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(g) or (h) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(i) of this chapter), as a means of mitigating interstate transport of fine particulates and SO₂.

* * * * *

■ 72. Amend § 97.1006 by:

- a. Revising paragraph (b)(2), the paragraph (c)(1) heading, paragraph (c)(1)(i), and paragraph (c)(1)(ii) introductory text;
- b. Adding paragraphs (c)(1)(iii) and (iv); and
- c. Revising paragraphs (c)(2)(iii) and (c)(3).

The revisions and additions read as follows:

§ 97.1006 Standard requirements.

* * * * *

(b) * * *

(2) The emissions and heat input data determined in accordance with §§ 97.1030 through 97.1035 shall be used to calculate allocations of CSAPR NO_x Ozone Season Group 3 allowances under §§ 97.1011 and 97.1012 and to determine compliance with the CSAPR NO_x Ozone Season Group 3 primary and secondary emissions limitations and assurance provisions under paragraph (c) of this section, provided that, for each monitoring location from which mass emissions are reported, the mass emissions amount used in calculating such allocations and determining such compliance shall be the mass emissions amount for the monitoring location determined in accordance with §§ 97.1030 through 97.1035 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero.

(c) * * *

(1) *CSAPR NO_x Ozone Season Group 3 primary and secondary emissions limitations*—(i) *Primary emissions limitation*. As of the allowance transfer deadline for a control period in a given year, the owners and operators of each CSAPR NO_x Ozone Season Group 3 source and each CSAPR NO_x Ozone Season Group 3 unit at the source shall hold, in the source’s compliance account, CSAPR NO_x Ozone Season Group 3 allowances available for deduction for such control period under § 97.1024(a) in an amount not less than the amount determined under § 97.1024(b), comprising the sum of:

(A) The tons of total NO_x emissions for such control period from all CSAPR NO_x Ozone Season Group 3 units at the source; plus

(B) Two times the sum, for all CSAPR NO_x Ozone Season Group 3 units at the

source and all days of the control period, of any NO_x emissions from such a unit on any day of the control period exceeding the NO_x emissions that would have occurred on that day if the unit had combusted the same daily heat input and emitted at any backstop daily NO_x emissions rate applicable to the unit for that control period.

(ii) *Exceedances of primary emissions limitation*. If total NO_x emissions during a control period in a given year from the CSAPR NO_x Ozone Season Group 3 units at a CSAPR NO_x Ozone Season Group 3 source are in excess of the CSAPR NO_x Ozone Season Group 3 primary emissions limitation set forth in paragraph (c)(1)(i) of this section, then:

* * * * *

(iii) *Secondary emissions limitation*. The owner or operator of a base CSAPR NO_x Ozone Season Group 3 unit subject to an emissions limitation under § 97.1025(c)(1) shall not discharge, or allow to be discharged, emissions of NO_x to the atmosphere during a control period in excess of the tonnage amount calculated in accordance with § 97.1025(c)(2).

(iv) *Exceedances of secondary emissions limitation*. If total NO_x emissions during a control period in a given year from a base CSAPR NO_x Ozone Season Group 3 unit are in excess of the amount of a CSAPR NO_x Ozone Season Group 3 secondary emissions limitation applicable to the unit for the control period under paragraph (c)(1)(iii) of this section, then the owners and operators of the unit and the source at which the unit is located shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act, and each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(2) * * *

(iii) Total NO_x emissions from all base CSAPR NO_x Ozone Season Group 3 units at base CSAPR NO_x Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) during a control period in a given year exceed the State assurance level if such total NO_x emissions exceed the sum, for such control period, of the

State NO_x Ozone Season Group 3 trading budget under § 97.1010(a) and the State’s variability limit under § 97.1010(e).

* * * * *

(3) *Compliance periods*.(i) A CSAPR NO_x Ozone Season Group 3 unit shall be subject to the requirements under paragraphs (c)(1)(i) and (ii) of this section, and a base CSAPR NO_x Ozone Season Group 3 unit shall be subject to the requirements under paragraph (c)(2) of this section, for the control period starting on the later of the applicable date in paragraph (c)(3)(i)(A), (B), or (C) of this section or the deadline for meeting the unit’s monitor certification requirements under § 97.1030(b) and for each control period thereafter:

(A) May 1, 2021, for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(A) of this chapter;

(B) May 1, 2023, for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(B) of this chapter; or

(C) [EFFECTIVE DATE OF FINAL RULE], for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(C) of this chapter.

(ii) A base CSAPR NO_x Ozone Season Group 3 unit shall be subject to the requirements under paragraphs (c)(1)(iii) and (iv) of this section for the control period starting on the later of May 1, 2024 or the deadline for meeting the unit’s monitor certification requirements under § 97.1030(b) and for each control period thereafter.

* * * * *

■ 73. Revise § 97.1010 to read as follows:

§ 97.1010 State NO_x Ozone Season Group 3 trading budgets, set-asides, and variability limits.

(a) *State NO_x Ozone Season Group 3 trading budgets*. (1)(i) The State NO_x Ozone Season Group 3 trading budgets for allocations of CSAPR NO_x Ozone Season Group 3 allowances for the control periods in 2021, 2022, 2023, and 2024 are as indicated in Table 1 to this paragraph, subject to prorating for the control period in 2023 as provided in paragraph (a)(1)(ii) of this section:

TABLE 1 TO PARAGRAPH (a)(1)(i)—STATE NO_x OZONE SEASON GROUP 3 TRADING BUDGETS BY CONTROL PERIOD
[Tons]

State	2021	2022	Portion of 2023 control period before [EFFECTIVE DATE OF FINAL RULE], before prorating	Portion of 2023 control period on and after [EFFECTIVE DATE OF FINAL RULE], before prorating	2024
Alabama			13,211	6,364	6,306
Arkansas			9,210	8,889	8,889
Delaware				384	434
Illinois	11,223	9,102	8,179	7,364	7,463
Indiana	17,004	12,582	12,553	11,151	9,391
Kentucky	17,542	14,051	14,051	11,640	11,640
Louisiana	16,291	14,818	14,818	9,312	9,312
Maryland	2,397	1,266	1,266	1,187	1,187
Michigan	14,384	12,290	9,975	10,718	10,718
Minnesota				3,921	3,921
Mississippi			6,315	5,024	4,400
Missouri			15,780	11,857	11,857
Nevada				2,280	2,372
New Jersey	1,565	1,253	1,253	799	799
New York	4,079	3,416	3,421	3,763	3,763
Ohio	13,481	9,773	9,773	8,369	8,369
Oklahoma			11,641	10,265	9,573
Pennsylvania	12,071	8,373	8,373	8,855	8,855
Tennessee			7,736	4,234	4,234
Texas			52,301	38,284	38,284
Utah				14,981	15,146
Virginia	6,331	3,897	3,980	3,090	2,814
West Virginia	15,062	12,884	12,884	12,478	12,478
Wisconsin			7,915	5,963	5,057
Wyoming				9,125	8,573

(ii) For the control period in 2023, the State NO_x Ozone Season Group 3 trading budget for each State shall be calculated as the sum of the following prorated amounts, rounded to the nearest allowance:

(A) The product of the non-prorated trading budget for the portion of the 2023 control period before [EFFECTIVE DATE OF FINAL RULE] shown for the State in Table 1 to paragraph (a)(1)(i) of this section (or zero if Table 1 shows no amount for such portion of the 2023 control period for the State) multiplied by a fraction whose numerator is the number of days from May 1, 2023 through the day before [EFFECTIVE DATE OF FINAL RULE], inclusive, and whose denominator is 153; and

(B) The product of the non-prorated trading budget for the portion of the 2023 control period on and after [EFFECTIVE DATE OF FINAL RULE] shown for the State in Table 1 to paragraph (a)(1)(i) of this section multiplied by a fraction whose numerator is the number of days from [EFFECTIVE DATE OF FINAL RULE] through September 30, 2023, inclusive, and whose denominator is 153.

(2) The State NO_x Ozone Season Group 3 trading budget for each State

and each control period in 2025 and thereafter shall be the amount provided for the State and control period in the applicable notice of data availability issued under paragraph (a)(3)(v)(C) of this section.

(3) The Administrator will calculate the State NO_x Ozone Season Group 3 trading budget for each State and each control period in 2025 and thereafter in the year before the year of the control period as follows:

(i) The State's trading budget for the control period shall be calculated as the sum (converted to tons at a conversion factor of 2,000 lb/ton and rounded to the nearest ton), for all units identified for inclusion in the calculation under paragraph (a)(3)(ii) of this section, of the product for each such unit of the NO_x emissions rate in lb/mmBtu identified for the unit under paragraph (a)(3)(iii) of this section multiplied by the heat input in mmBtu identified for the unit under paragraph (a)(3)(iv) of this section.

(ii) A unit in a State (and Indian country within the borders of the State) shall be included in the calculation of the State's trading budget for a control period if:

(A) The unit was included in the calculation of the State's trading budget

for the immediately preceding control period; or

(B) The unit's deadline for certification of monitoring systems under § 97.1030(b) is on or before May 1 of the year two years before the year of the control period (e.g., May 1, 2023 for calculation of the trading budget for the control period in 2025);

(C) Provided that a unit shall not be included in the calculation of a State's trading budget for a control period if, before completing such calculation, the Administrator determines that the unit is not actually a CSAPR NO_x Ozone Season Group 3 unit.

(iii) For each unit included in the calculation of the State's trading budget for a control period, the NO_x emissions rate in lb/mmBtu used in the calculation shall be identified as follows:

(A) For a unit listed in the table entitled "Dynamic Budget 2023 Template" and "Dynamic Budget 2026+ Template" posted at www.regulations.gov with docket identification number EPA-HQ-OAR-2021-0668-[XXXX], the NO_x emissions rate used in the calculation for the control period shall be the NO_x emissions rate shown for the unit and control period in the tables.

(B) For a unit not listed in the table referenced in paragraph (a)(3)(iii)(A) of this section, the NO_x emissions rate used in the calculation for the control period shall be identified according to the type of unit and the type of fuel combusted by the unit during the control period beginning May 1 on or immediately after the unit's deadline for certification of monitoring systems under § 97.1030(b) as follows:

(1) 0.012 lb/mmBtu, for a combined cycle combustion turbine other than an integrated coal gasification combined cycle unit;

(2) 0.030 lb/mmBtu, for a simple cycle combustion turbine or a boiler combusting only fuel oil or gaseous fuel (other than coal-derived fuel) during such control period; or

(3) 0.050 lb/mmBtu, for a boiler combusting any amount of coal or coal-derived fuel during such control period or any other unit not covered by paragraph (a)(3)(iii)(B)(1) or (2) of this section.

(iv) For each unit included in the calculation of the State's trading budget for a control period, the heat input in mmBtu used in the calculation shall be identified as follows:

(A) Except as provided in paragraph (a)(3)(iv)(B) of this section, the heat input used in the calculation for the control period shall be the heat input reported for the unit for the control

period in the year two years before the year of the control period (e.g., heat input reported for the control period in 2023 shall be used in calculating the trading budget for the control period in 2025).

(B) If no heat input data were reported for the unit for the control period in the year two years before the year of the control period and the heat input used for the unit in calculating the State's trading budget for the control period in 2024 was an estimate rather than the unit's actual reported heat input for the control period in 2021 or an earlier year, the same estimated heat input used in calculating the State's trading budget for the control period in 2024 shall be used in the calculations of the State's trading budgets for the control periods in 2025 and 2026.

(v)(A) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the State CSAPR NO_x Ozone Season Group 3 trading budget for each State, in accordance with paragraph (a)(3)(i) through (iv) of this section and §§ 97.1006(b)(2) and 97.1030 through 97.1035, for the control period in the year after the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(B) For each notice of data availability required in paragraph (a)(3)(v)(A) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice. Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations (including the identification of the units included in the calculations) are in accordance with the provisions referenced in paragraph (a)(3)(v)(A) of this section.

(C) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (a)(3)(v)(A) of this section. By May 1 immediately after the promulgation of each notice of data availability required in paragraph (a)(3)(v)(A) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (a)(3)(v)(B) of this section.

(b) *New unit set-asides.* (1) The States' new unit set-asides for allocations of CSAPR NO_x Ozone Season Group 3 allowances for the control periods in 2021, 2022, 2023, and 2024 are as indicated in Table 2 to this paragraph:

TABLE 2 TO PARAGRAPH (b)(1)—NEW UNIT SET-ASIDES BY CONTROL PERIOD
[Tons]

State	2021	2022	2023	2024
Alabama			191	189
Arkansas			178	178
Delaware			54	61
Illinois	265	265	368	373
Indiana	262	254	223	188
Kentucky	309	283	233	233
Louisiana	430	430	186	186
Maryland	135	115	24	24
Michigan	500	482	429	429
Minnesota			78	78
Mississippi			100	88
Missouri			237	237
Nevada			137	142
New Jersey	27	27	16	16
New York	168	168	188	188
Ohio	291	290	418	418
Oklahoma			205	191
Pennsylvania	335	339	266	266
Tennessee			85	85
Texas			766	766
Utah			449	454
Virginia	185	161	155	141
West Virginia	266	261	250	250
Wisconsin			119	101
Wyoming			274	257

(2) The new unit set-aside for allocations of CSAPR NO_x Ozone Season Group 3 allowances for each State for each control period in 2025 and thereafter shall be calculated as the product (rounded to the nearest allowance) of the State NO_x Ozone Season Group 3 trading budget determined for the State and control period under paragraph (a)(2) of this section multiplied by 0.02.

(c) *Indian country new unit set-asides for the control periods in 2021 and 2022.* The States' Indian country new unit set-asides for allocations of CSAPR NO_x Ozone Season Group 3 allowances for the control periods in 2021 and 2022 are as indicated in Table 3 to this paragraph:

TABLE 3 TO PARAGRAPH (C)—INDIAN COUNTRY NEW UNIT SET-ASIDES BY CONTROL PERIOD

[Tons]

State	2021	2022
Alabama		
Arkansas		
Delaware		
Illinois		
Indiana		
Kentucky		
Louisiana	15	15
Maryland		
Michigan	13	12
Minnesota		
Mississippi		
Missouri		
Nevada		
New Jersey		
New York	3	3
Ohio		
Oklahoma		
Pennsylvania		
Tennessee		
Texas		
Utah		
Virginia		
West Virginia		
Wisconsin		
Wyoming		

(d) *Indian country existing unit set-asides for the control periods in 2023 and thereafter.* The Indian country existing unit set-aside for allocations of CSAPR NO_x Ozone Season Group 3 allowances for each State for each control period in 2023 and thereafter shall be calculated as the sum of all allowance allocations to units in areas of Indian country within the borders of the State not subject to the State's SIP authority as provided in the applicable notice of data availability for the control period referenced in § 97.1011(a)(2).

(e) *Variability limits.* (1) The variability limit for the State NO_x Ozone Season Group 3 trading budget for each State for each control period from 2021

through 2024 shall be calculated as the product (rounded to the nearest ton) of the State NO_x Ozone Season Group 3 trading budget determined for the State and control period in accordance with paragraph (a)(1) of this section multiplied by 0.21.

(2) The variability limit for the State NO_x Ozone Season Group 3 trading budget for each State for each control period in 2025 and thereafter shall be calculated as the product (rounded to the nearest ton) of the State NO_x Ozone Season Group 3 trading budget determined for the State and control period in accordance with paragraph (a)(2) of this section multiplied by the greater of:

(i) 0.21; or

(ii) Any excess over 1.00 of the quotient (rounded to two decimal places) of the total heat input reported for the control period for all CSAPR NO_x Ozone Season Group 3 units in the State and Indian country within the borders of the State divided by the total heat input used in the calculation of the State's trading budget for the control period under paragraph (a)(3) of this section.

(f) *Relationship of trading budgets, set-asides, and variability limits.* Each State NO_x Ozone Season Group 3 trading budget in this section includes any tons in a new unit set-aside, Indian country new unit set-aside, or Indian country existing unit set-aside but does not include any tons in a variability limit.

■ 74. Amend § 97.1011 by revising the section heading and paragraphs (a), (b), and (c)(1) and (5) to read as follows:

§ 97.1011 CSAPR NO_x Ozone Season Group 3 allowance allocations to existing units.

(a) *Allocations to existing units in general.* (1) For the control periods in 2021 and each year thereafter, CSAPR NO_x Ozone Season Group 3 allowances will be allocated to units in each State and areas of Indian country within the borders of the State subject to the State's SIP authority as provided in notices of data availability issued by the Administrator. Starting with the control period in 2025, the notices of data availability will be the notices issued under paragraph (b)(10)(iii) of this section.

(2) For the control periods in 2023 and each year thereafter, CSAPR NO_x Ozone Season Group 3 allowances will be allocated to units in areas of Indian country within the borders of each State not subject to the State's SIP authority as provided in notices of data availability issued by the Administrator. Starting with the control period in 2025,

the notices of data availability will be the notices issued under paragraph (b)(10)(iii) of this section.

(3) Providing an allocation to a unit in a notice of data availability does not constitute a determination that the unit is a CSAPR NO_x Ozone Season Group 3 unit, and not providing an allocation to a unit in such notice does not constitute a determination that the unit is not a CSAPR NO_x Ozone Season Group 3 unit.

(b) *Calculation of default allocations to existing units for control periods in 2025 and thereafter.* For each control period in 2025 and thereafter, and for the CSAPR NO_x Ozone Season Group 3 units in each State and areas of Indian country within the borders of the State, the Administrator will calculate default allocations of CSAPR NO_x Ozone Season Group 3 allowances to the CSAPR NO_x Ozone Season Group 3 units as follows:

(1) For each State and control period, the total amount of CSAPR NO_x Ozone Season Group 3 allowances for which default allocations will be calculated will be the remainder of the State NO_x Ozone Season Group 3 trading budget for the control period under § 97.1010(a)(2) minus the new unit set-aside for the control period under § 97.1010(b)(2).

(2) A default allocation of CSAPR NO_x Ozone Season Group 3 allowances will be calculated for a CSAPR NO_x Ozone Season Group 3 unit in the State and Indian country within the borders of the State for a control period if:

(i) The unit meets the conditions under § 97.1010(a)(3)(ii) to be included in the calculation of the State's trading budget for the control period; and

(ii) The unit reported heat input greater than zero for the control period in the year two years before the year of the control period.

(3) For each CSAPR NO_x Ozone Season Group 3 unit for which a default allocation is being calculated for a control period, the Administrator will determine the following amounts for the five-year historical period ending with the year two years before the year of the control period for which default allocations are being calculated:

(i) The total heat input reported for the unit in accordance with part 75 of this chapter for the control period in each year of the five-year historical period;

(ii) The average of the three highest of the total heat input values determined for the unit under paragraph (b)(3)(i) of this section or, if fewer than three non-zero values were determined for the unit, the average of all such non-zero heat input values;

(iii) The total NO_x emissions reported for the unit in accordance with part 75 of this chapter for the control period in each year of the five-year historical period; and

(iv) The maximum of the total NO_x emissions values determined for the unit under paragraph (b)(3)(iii) of this section.

(4) The Administrator will calculate the initial unrounded default allocations for each CSAPR NO_x Ozone Season Group 3 unit according to the procedure in paragraph (b)(5) of this section and will recalculate the unrounded default allocations according to the procedures in paragraph (b)(6) or (7) of this section, as applicable, iterating the recalculations as necessary until the total of the unrounded default allocations to all eligible units equals the amount of allowances determined for the State under paragraph (b)(1) of this section.

(5) The Administrator will calculate the initial unrounded default allocations to CSAPR NO_x Ozone Season Group 3 units as follows:

(i) The Administrator will calculate the sum, for all units determined under paragraph (b)(2) of this section to be eligible to receive a default allocation, of the units' average heat input determined under paragraph (b)(3)(ii) of this section.

(ii) For each unit determined under paragraph (b)(2) of this section to be eligible to receive a default allocation, the Administrator will calculate the unit's unrounded default allocation as the lesser of:

(A) The product of the total amount of allowances determined for the State and control period under paragraph (b)(1) of this section multiplied by a fraction whose numerator is the unit's average heat input determined under paragraph (b)(3)(ii) of this section and whose denominator is the sum determined under paragraph (b)(5)(i) of this section; and

(B) The unit's maximum total NO_x emissions determined under paragraph (b)(3)(iv) of this section.

(iii) If the sum of the unrounded default allocations determined under paragraph (b)(5)(ii) of this section is less than the total amount of allowances determined for the State and control period under paragraph (b)(1) of this section, the Administrator will follow the procedures in paragraph (b)(6) or (7) of this section, as applicable.

(iv) If the sum of the unrounded default allocations determined under paragraph (b)(5)(ii) of this section equals the total amount of allowances determined for the State and control period under paragraph (b)(1) of this section, the Administrator will

determine the rounded default allocations according to the procedures in paragraphs (b)(8) and (9) of this section.

(6) If the unrounded default allocation determined in the previous round of the calculation procedure for at least one CSAPR NO_x Ozone Season Group 3 unit is less than the unit's maximum total NO_x emissions determined under paragraph (b)(3)(iv) of this section, the Administrator will recalculate the unrounded default allocations as follows:

(i) The Administrator will calculate the additional pool of allowances to be allocated as the remainder of the total amount of allowances determined for the State and control period under paragraph (b)(1) of this section minus the sum of the unrounded default allocations from the previous round of the calculation procedure for all units determined under paragraph (b)(2) of this section to be eligible to receive a default allocation.

(ii) The Administrator will calculate the sum, for all units whose unrounded default allocations determined in the previous round of the calculation procedure were less than the respective units' maximum total NO_x emissions determined under paragraph (b)(3)(iv) of this section, of the units' average heat input determined under paragraph (b)(3)(ii) of this section.

(iii) For each unit whose unrounded default allocation determined in the previous round of the calculation was less than the unit's maximum total NO_x emissions determined under paragraph (b)(3)(iv) of this section, the Administrator will recalculate the unit's unrounded default allocation, before rounding, as the lesser of:

(A) The sum of the unit's unrounded default allocation determined in the previous round of the calculation procedure plus the product of the additional pool of allowances determined under paragraph (b)(6)(i) of this section multiplied by a fraction whose numerator is the unit's average heat input determined under paragraph (b)(3)(ii) of this section and whose denominator is the sum determined under paragraph (b)(6)(ii) of this section; and

(B) The unit's maximum total NO_x emissions determined under paragraph (b)(3)(iv) of this section.

(iv) Except as provided in paragraph (b)(6)(iii) of this section, a unit's unrounded default allocation shall equal the amount determined in the previous round of the calculation procedure.

(v) If the sum of the unrounded default allocations determined under

paragraphs (b)(6)(iii) and (iv) of this section is less than the total amount of allowances determined for the State and control period under paragraph (b)(1) of this section, the Administrator will iterate the procedures in paragraph (b)(6) of this section or follow the procedures in paragraph (b)(7) of this section, as applicable.

(vi) If the sum of the unrounded default allocations determined under paragraphs (b)(6)(iii) and (iv) of this section equals the total amount of allowances determined for the State and control period under paragraph (b)(1) of this section, the Administrator will determine the rounded default allocations according to the procedures in paragraphs (b)(8) and (9) of this section.

(7) If the unrounded default allocation determined in the previous round of the calculation procedure for every CSAPR NO_x Ozone Season Group 3 unit equals the unit's maximum total NO_x emissions determined under paragraph (b)(3)(iv) of this section, the Administrator will recalculate the unrounded default allocations as follows:

(i) The Administrator will calculate the additional pool of allowances to be allocated as the remainder of the total amount of allowances determined for the State and control period under paragraph (b)(1) of this section minus the sum of the unrounded default allocations from the previous round for all units determined under paragraph (b)(2) of this section to be eligible to receive a default allocation.

(ii) The Administrator will recalculate the unrounded default allocation for each eligible unit as the sum of:

(A) The unit's unrounded default allocation as determined in the previous round of the calculation procedure; plus

(B) The product of the additional pool of allowances determined under paragraph (b)(7)(i) of this section multiplied by a fraction whose numerator is the unit's average heat input determined under paragraph (b)(3)(ii) of this section and whose denominator is the sum determined under paragraph (b)(5)(i) of this section.

(8) The Administrator will round the default allocation for each eligible unit determined under paragraph (b)(5), (6), or (7) of this section to the nearest allowance and make any adjustments required under paragraph (b)(9) of this section.

(9) If the sum of the default allocations after rounding under paragraph (b)(8) of this section does not equal the total amount of allowances determined for the State and control period under paragraph (b)(1) of this

section, the Administrator will adjust the default allocations as follows. The Administrator will list the CSAPR NO_x Ozone Season Group 3 units in descending order based on such units' allocation amounts under paragraph (b)(8) of this section and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount upward or downward by one CSAPR NO_x Ozone Season Group 3 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total of the adjusted default allocations equals the total amount of allowances determined for the State and control period under paragraph (b)(1) of this section.

(10)(i) By March 1, 2024 and March 1 of each year thereafter, the Administrator will calculate the default allocation of CSAPR NO_x Ozone Season Group 3 allowances to each CSAPR NO_x Ozone Season Group 3 unit in a State and Indian country within the borders of the State, in accordance with paragraphs (b)(1) through (9) of this section and §§ 97.1006(b)(2) and 97.1030 through 97.1035, for the control period in the year after the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(10)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice. Objections shall be submitted by the deadline specified in such notice of data availability and shall be limited to addressing whether the calculations (including the identification of the CSAPR NO_x Ozone Season Group 3 units) are in accordance with the provisions referenced in paragraph (b)(10)(i) of this section.

(iii) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(10)(i) of this section. By May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(10)(i) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(10)(ii) of this section.

(c) *Incorrect allocations of CSAPR NO_x Ozone Season Group 3 allowances to existing units.* (1) For each control period in 2021 and thereafter, if the Administrator determines that CSAPR NO_x Ozone Season Group 3 allowances were allocated for the control period to a recipient covered by the provisions of paragraph (c)(1)(i), (ii), or (iii) of this section, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(i) The recipient is not actually a CSAPR NO_x Ozone Season Group 3 unit under § 97.1004 as of the first day of the control period and is allocated CSAPR NO_x Ozone Season Group 3 allowances for such control period under paragraph (a)(1) or (2) of this section;

(ii) The recipient is not actually a CSAPR NO_x Ozone Season Group 3 unit under § 97.1004 as of the first day of the control period and is allocated CSAPR NO_x Ozone Season Group 3 allowances for such control period under a provision of a SIP revision approved under § 52.38(b)(10), (11), or (12) of this chapter that the SIP revision provides should be allocated only to recipients that are CSAPR NO_x Ozone Season Group 3 units as of the first day of such control period; or

(iii) The recipient is not located as of the first day of the control period in the State (and Indian country within the borders of the State) from whose NO_x Ozone Season Group 3 trading budget the CSAPR NO_x Ozone Season Group 3 allowances allocated under paragraph (a)(1) or (2) of this section, or under a provision of a SIP revision approved under § 52.38(b)(10), (11), or (12) of this chapter, were allocated for such control period.

* * * * *

(5) With regard to any CSAPR NO_x Ozone Season Group 3 allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section:

(i) If the non-recording decision under paragraph (c)(2) of this section or the deduction under paragraph (c)(3) of this section occurs on or before May 1, 2024, the Administrator will transfer the CSAPR NO_x Ozone Season Group 3 allowances to the new unit set-aside for 2021, 2022, or 2023 for the State from whose NO_x Ozone Season Group 3 trading budget the CSAPR NO_x Ozone Season Group 3 allowances were allocated.

(ii) If the non-recording decision under paragraph (c)(2) of this section or

the deduction under paragraph (c)(3) of this section occurs after May 1, 2024 and on or before May 1 of the year following the year of the control period for which the CSAPR NO_x Ozone Season Group 3 allowances were allocated, the Administrator will transfer the CSAPR NO_x Ozone Season Group 3 allowances to the new unit set-aside for such control period for the State from whose NO_x Ozone Season Group 3 trading budget the CSAPR NO_x Ozone Season Group 3 allowances were allocated.

(iii) If the non-recording decision under paragraph (c)(2) of this section or the deduction under paragraph (c)(3) of this section occurs after May 1, 2024 and after May 1 of the year following the year of the control period for which the CSAPR NO_x Ozone Season Group 3 allowances were allocated, the Administrator will transfer the CSAPR NO_x Ozone Season Group 3 allowances to a surrender account.

■ 75. Amend § 97.1012 by:

■ a. Revising paragraphs (a) introductory text and (a)(1)(i) and (ii);

■ b. Removing paragraphs (a)(1)(iii) and (iv);

■ c. Revising paragraphs (a)(2) and (a)(3)(i);

■ d. In paragraph (a)(3)(ii), adding “and” after the semicolon;

■ e. Revising paragraph (a)(3)(iii);

■ f. Removing paragraph (a)(3)(iv);

■ g. Revising paragraphs (a)(5) and (10);

■ h. In paragraph (a)(11), removing “§ 97.1011(b)(1)(i), (ii), and (v), of” and adding in its place “paragraph (a)(13) of this section, of”;

■ i. Adding paragraph (a)(13);

■ j. Revising paragraphs (b) introductory text and (b)(1) and (2);

■ k. In paragraph (b)(5), removing “Indian country within the borders of the State” and adding in its place “areas of Indian country within the borders of the State not subject to the State's SIP authority”;

■ l. Revising paragraph (b)(10);

■ m. In paragraph (b)(11), removing “§ 97.1011(b)(2)(i), (ii), and (v), of” and adding in its place “paragraph (b)(13) of this section, of”;

■ n. Adding paragraphs (b)(13) and (c).

The revisions and additions read as follows:

§ 97.1012 CSAPR NO_x Ozone Season Group 3 allowance allocations to new units.

(a) *Allocations from new unit set-asides.* For each control period in 2021 and thereafter for a State listed in § 52.38(b)(2)(iii)(A) of this chapter, or 2023 and thereafter for a State listed in § 52.38(b)(2)(iii)(B) or (C) of this chapter, and for the CSAPR NO_x Ozone Season Group 3 units in each State and areas of

Indian country within the borders of the State (except, for the control periods in 2021 and 2022, areas of Indian country within the borders of the State not subject to the State's SIP authority), the Administrator will allocate CSAPR NO_x Ozone Season Group 3 allowances to the CSAPR NO_x Ozone Season Group 3 units as follows:

(1) * * *

(i) CSAPR NO_x Ozone Season Group 3 units that are not allocated an amount of CSAPR NO_x Ozone Season Group 3 allowances for such control period in the applicable notice of data availability referenced in § 97.1011(a)(1) or (2) and that have deadlines for certification of monitoring systems under § 97.1030(b) not later than September 30 of the year of the control period; or

(ii) CSAPR NO_x Ozone Season Group 3 units whose allocation of an amount of CSAPR NO_x Ozone Season Group 3 allowances for such control period in the applicable notice of data availability referenced in § 97.1011(a)(1) or (2) is covered by § 97.1011(c)(2) or (3).

(2) The Administrator will establish a separate new unit set-aside for the State for each such control period. Each such new unit set-aside will be allocated CSAPR NO_x Ozone Season Group 3 allowances in an amount equal to the applicable amount of tons of NO_x emissions as set forth in § 97.1010(b) and will be allocated additional CSAPR NO_x Ozone Season Group 3 allowances (if any) in accordance with § 97.1011(c)(5) and paragraphs (b)(10) and (c)(5) of this section.

(3) * * *

(i) The control period in 2021, for a State listed in § 52.38(b)(2)(iii)(A) of this chapter, or the control period in 2023, for a State listed in § 52.38(b)(2)(iii)(B) or (C) of this chapter;

* * * * *

(iii) For a unit described in paragraph (a)(1)(ii) of this section, the first control period in which the CSAPR NO_x Ozone Season Group 3 unit operates in the State and Indian country within the borders of the State (except, for the control periods in 2021 and 2022, areas of Indian country within the borders of the State not subject to the State's SIP authority) after operating in another jurisdiction and for which the unit is not already allocated one or more CSAPR NO_x Ozone Season Group 3 allowances.

* * * * *

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR NO_x Ozone Season Group 3 allowances determined for all such CSAPR NO_x Ozone Season Group 3 units under paragraph (a)(4)(i) of this

section in the State and Indian country within the borders of the State (except, for the control periods in 2021 and 2022, areas of Indian country within the borders of the State not subject to the State's SIP authority) for such control period.

* * * * *

(10)(i) For a control period in 2021 or 2022, if, after completion of the procedures under paragraphs (a)(2) through (7) and (12) of this section for a control period, any unallocated CSAPR NO_x Ozone Season Group 3 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate to each CSAPR NO_x Ozone Season Group 3 unit that is in the State and areas of Indian country within the borders of the State subject to the State's SIP authority and is allocated an amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period in the applicable notice of data availability referenced in § 97.1011(a)(1) an amount of CSAPR NO_x Ozone Season Group 3 allowances equal to the following: The total amount of such remaining unallocated CSAPR NO_x Ozone Season Group 3 allowances in such new unit set-aside, multiplied by the unit's allocation under § 97.1011(a)(1) for such control period, divided by the remainder of the amount of tons in the applicable State NO_x Ozone Season Group 3 trading budget minus the sum of the amounts of tons in such new unit set-aside and the Indian country new unit set-aside for the State for such control period, and rounded to the nearest allowance.

(ii) For a control period in 2023 or thereafter, if, after completion of the procedures under paragraphs (a)(2) through (7) and (12) of this section for a control period, any unallocated CSAPR NO_x Ozone Season Group 3 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate to each CSAPR NO_x Ozone Season Group 3 unit that is in the State and Indian country within the borders of the State and is allocated an amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period by the Administrator in the applicable notice of data availability referenced in § 97.1011(a)(1) or (2), or under a provision of a SIP revision approved under § 52.38(b)(10), (11), or (12) of this chapter, an amount of CSAPR NO_x Ozone Season Group 3 allowances equal to the following: The total amount of such remaining unallocated CSAPR NO_x Ozone Season Group 3 allowances in such new unit set-aside, multiplied

by the unit's allocation under § 97.1011(a)(1) or (2) or a provision of a SIP revision approved under § 52.38(b)(10), (11), or (12) of this chapter for such control period, divided by the remainder of the amount of tons in the applicable State NO_x Ozone Season Group 3 trading budget minus the amount of tons in such new unit set-aside for the State for such control period, and rounded to the nearest allowance.

* * * * *

(13)(i) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_x Ozone Season Group 3 allowance allocation to each CSAPR NO_x Ozone Season Group 3 unit in a State and Indian country within the borders of the State (except, for the control periods in 2021 and 2022, areas of Indian country within the State not subject to the State's SIP authority), in accordance with paragraphs (a)(2) through (7), (10), and (12) of this section and §§ 97.1006(b)(2) and 97.1030 through 97.1035, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (a)(13)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice. Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations (including the identification of the CSAPR NO_x Ozone Season Group 3 units) are in accordance with the provisions referenced in paragraph (a)(13)(i) of this section.

(iii) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (a)(13)(i) of this section. By May 1 immediately after the promulgation of each notice of data availability required in paragraph (a)(13)(i) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (a)(13)(ii) of this section.

(b) *Allocations from Indian country new unit set-asides.* For the control periods in 2021 and 2022, for a State listed in § 52.38(b)(2)(iii)(A) of this chapter, and for the CSAPR NO_x Ozone

Season Group 3 units in areas of Indian country within the borders of each such State not subject to the State's SIP authority, the Administrator will allocate CSAPR NO_x Ozone Season Group 3 allowances to the CSAPR NO_x Ozone Season Group 3 units as follows:

(1) The CSAPR NO_x Ozone Season Group 3 allowances will be allocated to CSAPR NO_x Ozone Season Group 3 units that are not allocated an amount of CSAPR NO_x Ozone Season Group 3 allowances for such control period in the applicable notice of data availability issued under § 97.1011(a)(1) and that have deadlines for certification of monitoring systems under § 97.1030(b) not later than September 30 of the year of the control period, except as provided in paragraph (b)(10) of this section.

(2) The Administrator will establish a separate Indian country new unit set-aside for the State for each such control period. Each such Indian country new unit set-aside will be allocated CSAPR NO_x Ozone Season Group 3 allowances in an amount equal to the applicable amount of tons of NO_x emissions as set forth in § 97.1010(c) and will be allocated additional CSAPR NO_x Ozone Season Group 3 allowances (if any) in accordance with paragraph (c)(5) of this section.

* * * * *

(10) If, after completion of the procedures under paragraphs (b)(2) through (7) and (12) of this section for a control period, any unallocated CSAPR NO_x Ozone Season Group 3 allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will transfer such unallocated CSAPR NO_x Ozone Season Group 3 allowances to the new unit set-aside for the State for such control period.

* * * * *

(13)(i) By March 1, 2022 and March 1, 2023, the Administrator will calculate the CSAPR NO_x Ozone Season Group 3 allowance allocation to each CSAPR NO_x Ozone Season Group 3 unit in areas of Indian country within the borders of a State not subject to the State's SIP authority, in accordance with paragraphs (b)(2) through (7), (10), and (12) of this section and §§ 97.1006(b)(2) and 97.1030 through 97.1035, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(13)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced

in such notice. Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations (including the identification of the CSAPR NO_x Ozone Season Group 3 units) are in accordance with the provisions referenced in paragraph (b)(13)(i) of this section.

(iii) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(13)(i) of this section. By May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(13)(i) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(13)(ii) of this section.

(c) *Incorrect allocations of CSAPR NO_x Ozone Season Group 3 allowances to new units.* (1) For each control period in 2021 and thereafter, if the Administrator determines that CSAPR NO_x Ozone Season Group 3 allowances were allocated for the control period under paragraphs (a)(2) through (7) and (12) of this section or paragraphs (b)(2) through (7) and (12) of this section to a recipient that is not actually a CSAPR NO_x Ozone Season Group 3 unit under § 97.1004 as of the first day of such control period, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section.

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such CSAPR NO_x Ozone Season Group 3 allowances under § 97.1021.

(3) If the Administrator already recorded such CSAPR NO_x Ozone Season Group 3 allowances under § 97.1021 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under § 97.1024(b) for such control period, then the Administrator will deduct from the account in which such CSAPR NO_x Ozone Season Group 3 allowances were recorded an amount of CSAPR NO_x Ozone Season Group 3 allowances allocated for the same or a prior control period equal to the amount of such already recorded CSAPR NO_x Ozone Season Group 3 allowances. The authorized account representative shall ensure that there are sufficient CSAPR

NO_x Ozone Season Group 3 allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such CSAPR NO_x Ozone Season Group 3 allowances under § 97.1021 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under § 97.1024(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded CSAPR NO_x Ozone Season Group 3 allowances.

(5) With regard to any CSAPR NO_x Ozone Season Group 3 allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section:

(i) If the non-recording decision under paragraph (c)(2) of this section or the deduction under paragraph (c)(3) of this section occurs on or before May 1, 2023, the Administrator will transfer the CSAPR NO_x Ozone Season Group 3 allowances to the new unit set-aside, in the case of allowances allocated under paragraph (a) of this section, or the Indian country new unit set-aside, in the case of allowances allocated under paragraph (b) of this section, for the control period in 2021 or 2022 for the State from whose NO_x Ozone Season Group 3 trading budget the CSAPR NO_x Ozone Season Group 3 allowances were allocated.

(ii) If the non-recording decision under paragraph (c)(2) of this section or the deduction under paragraph (c)(3) of this section occurs after May 1, 2023 and on or before May 1, 2024, the Administrator will transfer the CSAPR NO_x Ozone Season Group 3 allowances to the new unit set-aside for the control period in 2023 for the State from whose NO_x Ozone Season Group 3 trading budget the CSAPR NO_x Ozone Season Group 3 allowances were allocated.

(iii) If the non-recording decision under paragraph (c)(2) of this section or the deduction under paragraph (c)(3) of this section occurs after May 1, 2024, the Administrator will transfer the CSAPR NO_x Ozone Season Group 3 allowances to a surrender account.

■ 76. Amend § 97.1021 by:

- a. In paragraph (a), removing “§ 97.1011(a)” and adding in its place “§ 97.1011(a)(1)”;
- b. Revising paragraph (b);
- c. Removing and reserving paragraph (c);
- d. Revising paragraph (d);
- e. Adding paragraph (e);
- f. Revising paragraphs (f) and (g);

■ g. In paragraph (h), removing “May 1 of each year thereafter, the” and adding in its place “May 1, 2023, the”;

■ h. Adding paragraphs (i) and (j); and

■ i. In paragraph (m), adding “or (e)” after “§ 97.811(d)” each time it appears.

The revisions and addition read as follows:

§ 97.1021 Recordation of CSAPR NO_x Ozone Season Group 3 allowance allocations and auction results.

* * * * *

(b) By July 29, 2021, the Administrator will record in each CSAPR NO_x Ozone Season Group 3 source’s compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the CSAPR NO_x Ozone Season Group 3 units at the source in accordance with § 97.1011(a)(1) for the control period in 2022.

* * * * *

(d) By [30 DAYS AFTER EFFECTIVE DATE OF FINAL RULE], the Administrator will record in each CSAPR NO_x Ozone Season Group 3 source’s compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the CSAPR NO_x Ozone Season Group 3 units at the source in accordance with § 97.1011(a)(1) for the control period in 2023.

(e) By [30 DAYS AFTER EFFECTIVE DATE OF FINAL RULE], the Administrator will record in each CSAPR NO_x Ozone Season Group 3 source’s compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the CSAPR NO_x Ozone Season Group 3 units at the source in accordance with § 97.1011(a)(1) for the control period in 2024, unless the State in which the source is located notifies the Administrator in writing by [EFFECTIVE DATE OF FINAL RULE] of the State’s intent to submit to the Administrator a complete SIP revision by September 1, 2023 meeting the requirements of § 52.38(b)(10)(i) through (iv) of this chapter.

(1) If, by September 1, 2023 the State does not submit to the Administrator such complete SIP revision, the Administrator will record by September 15, 2023 in each CSAPR NO_x Ozone Season Group 3 source’s compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the CSAPR NO_x Ozone Season Group 3 units at the source in accordance with § 97.1011(a)(1) for the control period in 2024.

(2) If the State submits to the Administrator by September 1, 2023 and the Administrator approves by March 1, 2024 such complete SIP revision, the Administrator will record by March 1, 2024 in each CSAPR NO_x Ozone Season

Group 3 source’s compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the CSAPR NO_x Ozone Season Group 3 units at the source as provided in such approved, complete SIP revision for the control period in 2024.

(3) If the State submits to the Administrator by September 1, 2023 and the Administrator does not approve by March 1, 2024 such complete SIP revision, the Administrator will record by March 1, 2024 in each CSAPR NO_x Ozone Season Group 3 source’s compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the CSAPR NO_x Ozone Season Group 3 units at the source in accordance with § 97.1011(a)(1) for the control period in 2024.

(f) By July 1, 2024 and July 1 of each year thereafter, the Administrator will record in each CSAPR NO_x Ozone Season Group 3 source’s compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the CSAPR NO_x Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_x Ozone Season Group 3 allowances auctioned to CSAPR NO_x Ozone Season Group 3 units, in accordance with § 97.1011(a)(1), or with a SIP revision approved under § 52.38(b)(11) or (12) of this chapter, for the control period in the year after the year of the applicable recordation deadline under this paragraph.

(g) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_x Ozone Season Group 3 source’s compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the CSAPR NO_x Ozone Season Group 3 units at the source in accordance with § 97.1012(a) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

* * * * *

(i) By [30 DAYS AFTER EFFECTIVE DATE OF FINAL RULE], the Administrator will record in each CSAPR NO_x Ozone Season Group 3 source’s compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the CSAPR NO_x Ozone Season Group 3 units at the source in accordance with § 97.1011(a)(2) for the control periods in 2023 and 2024.

(j) By July 1, 2024 and July 1 of each year thereafter, the Administrator will record in each CSAPR NO_x Ozone Season Group 3 source’s compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the

CSAPR NO_x Ozone Season Group 3 units at the source in accordance with § 97.1011(a)(2) for the control period in the year after the year of the applicable recordation deadline under this paragraph.

* * * * *

■ 77. Amend § 97.1024 by:

■ a. Revising the section heading;

■ b. In paragraphs (a) introductory text and (b) introductory text, adding “primary” before “emissions limitation”;

■ c. Revising paragraph (b)(1);

■ d. Adding paragraph (b)(3); and

■ e. In paragraph (c)(2)(ii), adding “or (e)” after “§ 97.826(d)”.

The revisions and addition read as follows:

§ 97.1024 Compliance with CSAPR NO_x Ozone Season Group 3 primary emissions limitation.

* * * * *

(b) * * *

(1) Until the amount of CSAPR NO_x Ozone Season Group 3 allowances deducted equals the sum of:

(i) The number of tons of total NO_x emissions from all CSAPR NO_x Ozone Season Group 3 units at the source for such control period; plus

(ii) Two times the sum (converted to tons at a conversion factor of 2,000 lb/ton and rounded to the nearest ton), for all days in the control period and all CSAPR NO_x Ozone Season Group 3 units at the source to which backstop daily NO_x emissions rates apply for the control period under paragraph (b)(3) of this section, of any amount by which a unit’s NO_x emissions for a given day in pounds exceed the product in pounds of the unit’s total heat input in mmBtu for that day multiplied by the applicable backstop daily NO_x emissions rate in lb/mmBtu; or

* * * * *

(3) The applicable backstop daily NO_x emissions rates are as follows:

(i) For the control periods in 2024 and each year thereafter, a backstop daily NO_x emissions rate of 0.14 lb/mmBtu shall apply to each CSAPR NO_x Ozone Season Group 3 unit combusting any coal during the control period, serving a generator with nameplate capacity of 100 MW or more, and equipped with selective catalytic reduction controls, except a circulating fluidized bed boiler.

(ii) For the control periods in 2027 and each year thereafter, a backstop daily NO_x emissions rate of 0.14 lb/mmBtu shall apply to each CSAPR NO_x Ozone Season Group 3 unit combusting any coal during the control period and serving a generator with nameplate

capacity of 100 MW or more, except a circulating fluidized bed boiler.

* * * * *

■ 78. Amend § 97.1025 by revising the section heading and adding paragraph (c) to read as follows:

§ 97.1025 Compliance with CSAPR NO_x Ozone Season Group 3 assurance provisions; CSAPR NO_x Ozone Season Group 3 secondary emissions limitation.

* * * * *

(c) *CSAPR NO_x Ozone Season Group 3 secondary emissions limitation.* (1) The owner or operator of a base CSAPR NO_x Ozone Season Group 3 unit shall not discharge, or allow to be discharged, emissions of NO_x to the atmosphere during a control period in excess of the tonnage amount calculated in accordance with paragraph (c)(2) of this section, provided that the emissions limitation established under this paragraph shall apply to a unit for a control period only if:

(i) The unit is included for the control period in a group of base CSAPR NO_x Ozone Season Group 3 units at base CSAPR NO_x Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) having a common designated representative and the owners and operators of such units and sources are subject to a requirement for such control period to hold one or more CSAPR NO_x Ozone Season Group 3 allowances under § 97.1006(c)(2)(i) and paragraph (b) of this section with respect to such group; and

(ii) The unit was required to report NO_x emissions and heat input data for all or portions of at least 367 operating hours during the control period and all or portions of at least 367 operating hours during at least one previous control period under the CSAPR NO_x Ozone Season Group 1 Trading Program, CSAPR NO_x Ozone Season Group 2 Trading Program, or CSAPR NO_x Ozone Season Group 3 Trading Program.

(2) The amount of the emissions limitation applicable to a base CSAPR NO_x Ozone Season Group 3 unit for a control period under paragraph (c)(1) of this section, in tons of NO_x, shall be calculated as the sum of 50 plus the product (converted to tons at a conversion factor of 2,000 lb/ton and rounded to the nearest ton) of multiplying—

(i) The total heat input in mmBtu reported for the unit for the control period in accordance with §§ 97.1030 through 97.1035; and

(ii) A NO_x emission rate of 0.10 lb/mmBtu or, if higher, the product of 1.25 times the lowest seasonal average NO_x

emission rate in lb/mmBtu achieved by the unit in any previous control period for which the unit was required to report NO_x emissions and heat input data for all or portions of at least 367 operating hours under the CSAPR NO_x Ozone Season Group 1 Trading Program, CSAPR NO_x Ozone Season Group 2 Trading Program, or CSAPR NO_x Ozone Season Group 3 Trading Program, where the unit's seasonal average NO_x emission rate for each such previous control period shall be calculated from such reported data as the quotient of the unit's total NO_x emissions in tons for the control period divided by the unit's total heat input in mmBtu for the control period, multiplied by a conversion factor of 2,000 lb/ton, and rounded to the nearest 0.0001 lb/mmBtu.

■ 79. Amend § 97.1026 by:

■ a. Revising paragraph (b);

■ b. In paragraph (c), removing “State (or Indian)” and adding in its place “State (and Indian”); and

■ c. Adding paragraph (d).

The revision and addition read as follows:

§ 97.1026 Banking.

* * * * *

(b) Any CSAPR NO_x Ozone Season Group 3 allowance that is held in a compliance account or a general account will remain in such account unless and until the CSAPR NO_x Ozone Season Group 3 allowance is deducted or transferred under § 97.1011(c), § 97.1012(c), § 97.1023, § 97.1024, § 97.1025, § 97.1027, or § 97.1028 or paragraph (c) or (d) of this section.

* * * * *

(d) Before the allowance transfer deadline for each control period in 2024 or a subsequent year, the Administrator will deduct amounts of CSAPR NO_x Ozone Season Group 3 allowances issued for the control periods in previous years exceeding the CSAPR NO_x Ozone Season Group 3 allowance bank ceiling target for the control period in accordance with paragraphs (d)(1) through (4) of this section.

(1) As soon as practicable on or after August 1, 2024 and August 1 of each subsequent year, the Administrator will temporarily suspend acceptance of CSAPR NO_x Ozone Season Group 3 allowance transfers submitted under § 97.1022 and, before resuming acceptance of such transfers, will take the actions in paragraphs (d)(2) through (4) of this section.

(2) The Administrator will determine each of the following values:

(i) The CSAPR NO_x Ozone Season Group 3 allowance bank ceiling target for the control period in the year of the

deadline under paragraph (d)(1) of this section, calculated as the product, rounded to the nearest allowance, of 0.105 times the sum for all States listed in § 52.38(b)(2)(iii) of this chapter of the State NO_x Ozone Season Group 3 trading budgets under § 97.1010(a) for such States for such control period.

(ii) The total amount of CSAPR NO_x Ozone Season Group 3 allowances issued for control periods in years before the year of the deadline under paragraph (d)(1) of this section and held in all compliance and general accounts.

(3) If the CSAPR NO_x Ozone Season Group 3 allowance bank ceiling target determined under paragraph (d)(2)(i) of this section is less than the total amount of CSAPR NO_x Ozone Season Group 3 allowances determined under paragraph (d)(2)(ii) of this section, then for each compliance account or general account holding CSAPR NO_x Ozone Season Group 3 allowances issued for control periods in years before the year of the deadline under paragraph (d)(1) of this section, the Administrator will:

(i) Determine the total amount of CSAPR NO_x Ozone Season Group 3 allowances issued for control periods in years before the year of the deadline under paragraph (d)(1) of this section and held in the account.

(ii) Determine the account's share of the CSAPR NO_x Ozone Season Group 3 allowance bank ceiling target for the control period, calculated as the product, rounded up to the nearest allowance, of the CSAPR NO_x Ozone Season Group 3 allowance bank ceiling target determined under paragraph (d)(2)(i) of this section multiplied by a fraction whose numerator is the total amount of CSAPR NO_x Ozone Season Group 3 allowances held in the account determined under paragraph (d)(3)(i) of this section and whose denominator is the total amount of CSAPR NO_x Ozone Season Group 3 allowances held in all compliance and general accounts determined under paragraph (d)(2)(ii) of this section.

(iii) Deduct an amount of CSAPR NO_x Ozone Season Group 3 allowances issued for control periods in years before the year of the deadline under paragraph (d)(1) of this section equal to any positive remainder of the total amount of CSAPR NO_x Ozone Season Group 3 allowances held in the account determined under paragraph (d)(3)(i) of this section minus the account's share of the CSAPR NO_x Ozone Season Group 3 allowance bank ceiling target for the control period determined under paragraph (d)(3)(ii) of this section. The allowances will be deducted on a first-in, first-out basis in the order set forth in § 97.1024(c)(2)(i) and (ii).

(iv) Record the deductions under paragraph (d)(3)(iii) of this section in the account.

(4)(i) In computing any amounts of CSAPR NO_x Ozone Season Group 3 allowances to be deducted from general accounts under paragraph (d)(3) of this section, the Administrator may group multiple general accounts whose ownership interests are held by the same or related persons or entities and treat the group of accounts as a single account for purposes of such computation.

(ii) Following a computation for a group of general accounts in accordance with paragraph (d)(4)(i) of this section, the Administrator will deduct from and record in each individual account in such group a proportional share of the quantity of CSAPR NO_x Ozone Season Group 3 allowances computed for such group, basing such shares on the respective quantities of CSAPR NO_x Ozone Season Group 3 allowances determined for such individual accounts under paragraph (d)(3)(i) of this section.

(iii) In determining the proportional shares under paragraph (d)(4)(ii) of this section, the Administrator may employ any reasonable adjustment methodology to truncate or round each such share up or down to a whole number and to cause the total of such whole numbers to equal the amount of CSAPR NO_x Ozone Season Group 3 allowances computed for such group of accounts in accordance with paragraph (d)(4)(i) of

this section, even where such adjustments cause the numbers of CSAPR NO_x Ozone Season Group 3 allowances remaining in some individual accounts following the deductions to equal zero.

- 80. Amend § 97.1030 by:
- a. Revising paragraph (b)(1); and
- b. In paragraph (b)(3), removing “(b)(2)” and adding in its place “(b)(1) or (2)”.

The revision reads as follows:

§ 97.1030 General monitoring, recordkeeping, and reporting requirements.

* * * * *

(b) * * *

(1)(i) May 1, 2021, for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(A) of this chapter;

(ii) May 1, 2023, for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(B) of this chapter;

(iii) [EFFECTIVE DATE OF FINAL RULE], for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(C) of this chapter, where the unit is required to report NO_x mass emissions data or NO_x emissions rate data according to 40 CFR part 75 to address other regulatory requirements; or

(iv) [180 DAYS AFTER EFFECTIVE DATE OF FINAL RULE] for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(C) of this chapter, where the unit is not required to report

NO_x mass emissions data or NO_x emissions rate data according to 40 CFR part 75 to address other regulatory requirements.

* * * * *

■ 81. Amend § 97.1034 by:

- a. Revising paragraph (d)(2)(i); and
- b. In paragraph (d)(4), removing “or CSAPR SO₂ Group 1 Trading Program, quarterly” and adding in its place “CSAPR SO₂ Group 1 Trading Program, or CSAPR SO₂ Group 2 Trading Program, quarterly”.

The revision reads as follows:

§ 97.1034 Recordkeeping and reporting.

* * * * *

(d) * * *

(2) * * *

(i)(A) The calendar quarter covering May 1, 2021 through June 30, 2021, for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(A) of this chapter;

(B) The calendar quarter covering May 1, 2023 through June 30, 2023, for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(B) of this chapter; or

(C) The calendar quarter covering [EFFECTIVE DATE OF FINAL RULE] through June 30, 2023, for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(C) of this chapter;

* * * * *

[FR Doc. 2022-04551 Filed 3-30-22; 4:15 pm]

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2023 and Updates to the IRF Quality Reporting Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1767–P]

RIN 0938–AU78

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2023 and Updates to the IRF Quality Reporting Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes updating the prospective payment rates for inpatient rehabilitation facilities (IRFs) for Federal fiscal year (FY) 2023. As required by statute, this proposed rule includes the classification and weighting factors for the IRF prospective payment system's case-mix groups and a description of the methodologies and data used in computing the prospective payment rates for FY 2023. In addition, we are proposing to codify CMS' existing teaching status adjustment policy through proposed amendments to the regulation text and proposing to update and clarify the IRF teaching policy with respect to IRF hospital closures and displaced residents. In this proposed rule, we are also soliciting comments on the methodology for updating the facility level adjustment factors. Additionally, we are soliciting comments regarding the IRF transfer payment policy. This rule proposes to establish a permanent cap policy to smooth the impact of year-to-year changes in IRF payments related to changes in the IRF wage index. This proposed rule also includes updates for the IRF Quality Reporting Program (QRP).

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on May 31, 2022.

ADDRESSES: In commenting, please refer to file code CMS–1767–P.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1767–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1767–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Gwendolyn Johnson, (410) 786–6954, for general information.

Catie Cooksey, (410) 786–0179, for information about the IRF payment policies and payment rates.

Kim Schwartz, (410) 786–2571 and Gwendolyn Johnson, (410) 786–6954, for information about the IRF coverage policies.

Ariel Cress, (410) 786–8571, for information about the IRF quality reporting program.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

Availability of Certain Information Through the Internet on the CMS Website

The IRF prospective payment system (IRF PPS) Addenda along with other supporting documents and tables referenced in this proposed rule are available through the internet on the

CMS website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS>.

We note that prior to 2020, each rule or notice issued under the IRF PPS has included a detailed reiteration of the various regulatory provisions that have affected the IRF PPS over the years. That discussion, along with detailed background information for various other aspects of the IRF PPS, is now available on the CMS website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS>.

I. Executive Summary

A. Purpose

This rulemaking proposes updating the prospective payment rates for IRFs for FY 2023 (that is, for discharges occurring on or after October 1, 2022, and on or before September 30, 2023) as required under section 1886(j)(3)(C) of the Social Security Act (the Act). As required by section 1886(j)(5) of the Act, this proposed rule includes the classification and weighting factors for the IRF PPS's case-mix groups (CMGs) and a description of the methodologies and data used in computing the prospective payment rates for FY 2023. This proposed rule proposes to codify CMS' existing teaching status adjustment policy through proposed amendments to the regulation text and proposes to update and clarify the IRF teaching policy with respect to IRF hospital closures and displaced residents. We are also soliciting comments on the methodology for updating the facility level adjustment factors. Additionally, we are soliciting comments regarding the IRF transfer payment policy. We are also proposing to establish a permanent cap policy to smooth the impact of year-to-year changes in IRF payments related to changes in the IRF wage index. This rule also proposes to require quality data reporting on all IRF patients beginning with the FY 2025 IRF QRP and amend the regulations consistent with the proposed requirements. This rule also proposes to correct an error in the regulations text at § 412.614(d)(2). Finally, we are seeking comment on three issues: (1) Future measure concepts under consideration for the IRF QRP; (2) a future dQM for the IRF QRP; and (3) overarching principles for measuring equity and health quality disparities across CMS Quality Programs, including the IRF QRP.

B. Summary of Major Provisions

In this proposed rule, we use the methods described in the FY 2022 IRF

PPS final rule (86 FR 42362) to update the prospective payment rates for FY 2023 using updated FY 2021 IRF claims and the most recent available IRF cost report data, which is FY 2020 IRF cost report data. This proposed rule proposes to codify CMS' existing teaching status adjustment policy through proposed amendments to the regulation text and proposes to update and clarify the IRF teaching status adjustment policy with respect to IRF hospital closures and

displaced residents. We are also soliciting comments on the methodology for updating the facility level adjustment factors. Additionally, we are soliciting comments regarding the IRF transfer payment policy.

We are also proposing to establish a permanent cap policy to smooth the impact of year-to-year changes in IRF payments related to changes in the IRF wage index. This rule also proposes to collect quality reporting data for all IRF

patients beginning with the FY 2025 IRF QRP and revise the regulations. Finally, we are seeking comment on three issues: (1) Future measure concepts for the IRF QRP; (2) a future digital quality measure (dQM) for the IRF QRP; and (3) overarching principles for measuring equity and health quality disparities across CMS Quality Programs, including the IRF QRP.

C. Summary of Impact

TABLE 1: Cost and Benefit

Provision Description	Transfers/Costs
FY 2023 IRF PPS payment rate update	The overall economic impact of this proposed rule is an estimated \$170 million in increased payments from the Federal Government to IRFs during FY 2023.
FY 2025 IRF QRP changes	The overall economic impact of this proposed rule is an estimated increase in cost to IRFs of \$31,783,532.15 beginning with FY 2025.

II. Background

A. Statutory Basis and Scope for IRF PPS Provisions

Section 1886(j) of the Act provides for the implementation of a per-discharge PPS for inpatient rehabilitation hospitals and inpatient rehabilitation units of a hospital (collectively, hereinafter referred to as IRFs). Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs), but not direct graduate medical education costs, costs of approved nursing and allied health education activities, bad debts, and other services or items outside the scope of the IRF PPS. A complete discussion of the IRF PPS provisions appears in the original FY 2002 IRF PPS final rule (66 FR 41316) and the FY 2006 IRF PPS final rule (70 FR 47880) and we provided a general description of the IRF PPS for FYs 2007 through 2019 in the FY 2020 IRF PPS final rule (84 FR 39055 through 39057). A general description of the IRF PPS for FYs 2020 through 2022, along with detailed background information for various other aspects of the IRF PPS, is now available on the CMS website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Inpatient-RehabFacPPS>.

Under the IRF PPS from FY 2002 through FY 2005, the prospective payment rates were computed across 100 distinct CMGs, as described in the FY 2002 IRF PPS final rule (66 FR 41316). We constructed 95 CMGs using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (in some cases,

cognitive status and age may not be a factor in defining a CMG). In addition, we constructed five special CMGs to account for very short stays and for patients who expire in the IRF.

For each of the CMGs, we developed relative weighting factors to account for a patient's clinical characteristics and expected resource needs. Thus, the weighting factors accounted for the relative difference in resource use across all CMGs. Within each CMG, we created tiers based on the estimated effects that certain comorbidities would have on resource use.

We established the Federal PPS rates using a standardized payment conversion factor (formerly referred to as the budget-neutral conversion factor). For a detailed discussion of the budget-neutral conversion factor, please refer to our FY 2004 IRF PPS final rule (68 FR 45684 through 45685). In the FY 2006 IRF PPS final rule (70 FR 47880), we discussed in detail the methodology for determining the standard payment conversion factor.

We applied the relative weighting factors to the standard payment conversion factor to compute the unadjusted prospective payment rates under the IRF PPS from FYs 2002 through 2005. Within the structure of the payment system, we then made adjustments to account for interrupted stays, transfers, short stays, and deaths. Finally, we applied the applicable adjustments to account for geographic variations in wages (wage index), the percentage of low-income patients, location in a rural area (if applicable), and outlier payments (if applicable) to the IRFs' unadjusted prospective payment rates.

For cost reporting periods that began on or after January 1, 2002, and before October 1, 2002, we determined the final prospective payment amounts using the transition methodology prescribed in section 1886(j)(1) of the Act. Under this provision, IRFs transitioning into the PPS were paid a blend of the Federal IRF PPS rate and the payment that the IRFs would have received had the IRF PPS not been implemented. This provision also allowed IRFs to elect to bypass this blended payment and immediately be paid 100 percent of the Federal IRF PPS rate. The transition methodology expired as of cost reporting periods beginning on or after October 1, 2002 (FY 2003), and payments for all IRFs now consist of 100 percent of the Federal IRF PPS rate.

Section 1886(j) of the Act confers broad statutory authority upon the Secretary to propose refinements to the IRF PPS. In the FY 2006 IRF PPS final rule (70 FR 47880) and in correcting amendments to the FY 2006 IRF PPS final rule (70 FR 57166), we finalized a number of refinements to the IRF PPS case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments. These refinements included the adoption of the Office of Management and Budget's (OMB's) Core-Based Statistical Area (CBSA) market definitions; modifications to the CMGs, tier comorbidities; and CMG relative weights, implementation of a new teaching status adjustment for IRFs; rebasing and revising the market basket index used to update IRF payments, and updates to the rural, low-income percentage (LIP), and high-cost outlier adjustments. Beginning with the FY

2006 IRF PPS final rule (70 FR 47908 through 47917), the market basket index used to update IRF payments was a market basket reflecting the operating and capital cost structures for freestanding IRFs, freestanding inpatient psychiatric facilities (IPFs), and long-term care hospitals (LTCHs) (hereinafter referred to as the rehabilitation, psychiatric, and long-term care (RPL) market basket). Any reference to the FY 2006 IRF PPS final rule in this proposed rule also includes the provisions effective in the correcting amendments. For a detailed discussion of the final key policy changes for FY 2006, please refer to the FY 2006 IRF PPS final rule.

The regulatory history previously included in each rule or notice issued under the IRF PPS, including a general description of the IRF PPS for FYs 2007 through 2020, is available on the CMS website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS>.

In late 2019,¹ the United States began responding to an outbreak of a virus named “SARS-CoV-2” and the disease it causes, which is named “coronavirus disease 2019” (abbreviated “COVID-19”). Due to our prioritizing efforts in support of containing and combatting the PHE for COVID-19, and devoting significant resources to that end, we published two interim final rules with comment period affecting IRF payment and conditions for participation. The interim final rule with comment period (IFC) entitled, “Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency”, published on April 6, 2020 (85 FR 19230) (hereinafter referred to as the April 6, 2020 IFC), included certain changes to the IRF PPS medical supervision requirements at 42 CFR 412.622(a)(3)(iv) and 412.29(e) during the PHE for COVID-19. In addition, in the April 6, 2020 IFC, we removed the post-admission physician evaluation requirement at § 412.622(a)(4)(ii) for all IRFs during the PHE for COVID-19. In the FY 2021 IRF PPS final rule, to ease documentation and administrative burden, we also removed the post-admission physician evaluation documentation requirement at 42 CFR 412.622(a)(4)(ii) permanently beginning in FY 2021.

A second IFC entitled, “Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional

Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program” was published on May 8, 2020 (85 FR 27550) (hereinafter referred to as the May 8, 2020 IFC). Among other changes, the May 8, 2020 IFC included a waiver of the “3-hour rule” at § 412.622(a)(3)(ii) to reflect the waiver required by section 3711(a) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116-136, enacted on March 27, 2020). In the May 8, 2020 IFC, we also modified certain IRF coverage and classification requirements for freestanding IRF hospitals to relieve acute care hospital capacity concerns in States (or regions, as applicable) experiencing a surge during the PHE for COVID-19. In addition to the policies adopted in our IFCs, we responded to the PHE with numerous blanket waivers² and other flexibilities,³ some of which are applicable to the IRF PPS.

B. Provisions of the PPACA and the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) Affecting the IRF PPS in FY 2012 and Beyond

The Patient Protection and Affordable Care Act (PPACA) (Pub. L. 111-148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), which amended and revised several provisions of the PPACA, was enacted on March 30, 2010. In this proposed rule, we refer to the two statutes collectively as the “Patient Protection and Affordable Care Act” or “PPACA”.

The PPACA included several provisions that affect the IRF PPS in FYs 2012 and beyond. In addition to what was previously discussed, section 3401(d) of the PPACA also added section 1886(j)(3)(C)(ii)(I) of the Act (providing for a “productivity adjustment” for FY 2012 and each subsequent FY). The productivity adjustment for FY 2023 is discussed in section V.B. of this proposed rule. Section 1886(j)(3)(C)(ii)(II) of the Act provides that the application of the productivity adjustment to the market basket update may result in an update

that is less than 0.0 for a FY and in payment rates for a FY being less than such payment rates for the preceding FY.

Sections 3004(b) of the PPACA and section 411(b) of the MACRA (Pub. L. 114-10, enacted on April 16, 2015) also addressed the IRF PPS. Section 3004(b) of PPACA reassigned the previously designated section 1886(j)(7) of the Act to section 1886(j)(8) of the Act and inserted a new section 1886(j)(7) of the Act, which contains requirements for the Secretary to establish a QRP for IRFs. Under that program, data must be submitted in a form and manner and at a time specified by the Secretary. Beginning in FY 2014, section 1886(j)(7)(A)(i) of the Act requires the application of a 2-percentage point reduction to the market basket increase factor otherwise applicable to an IRF (after application of paragraphs (C)(iii) and (D) of section 1886(j)(3) of the Act) for a FY if the IRF does not comply with the requirements of the IRF QRP for that FY. Application of the 2-percentage point reduction may result in an update that is less than 0.0 for a FY and in payment rates for a FY being less than such payment rates for the preceding FY. Reporting-based reductions to the market basket increase factor are not cumulative; they only apply for the FY involved. Section 411(b) of the MACRA amended section 1886(j)(3)(C) of the Act by adding paragraph (iii), which required us to apply for FY 2018, after the application of section 1886(j)(3)(C)(ii) of the Act, an increase factor of 1.0 percent to update the IRF prospective payment rates.

C. Operational Overview of the Current IRF PPS

As described in the FY 2002 IRF PPS final rule (66 FR 41316), upon the admission and discharge of a Medicare Part A fee-for-service (FFS) patient, the IRF is required to complete the appropriate sections of a Patient Assessment Instrument (PAI), designated as the IRF-PAI. In addition, beginning with IRF discharges occurring on or after October 1, 2009, the IRF is also required to complete the appropriate sections of the IRF-PAI upon the admission and discharge of each Medicare Advantage (MA) patient, as described in the FY 2010 IRF PPS final rule (74 FR 39762 and 74 FR 50712). All required data must be electronically encoded into the IRF-PAI software product. Generally, the software product includes patient classification programming called the Grouper software. The Grouper software uses specific IRF-PAI data elements to classify (or group) patients into distinct

² CMS, “COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers,” (updated Feb. 19 2021) (available at <https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>).

³ CMS, “COVID-19 Frequently Asked Questions (FAQs) on Medicare Fee-for-Service (FFS) Billing,” (updated March 5, 2021) (available at <https://www.cms.gov/files/document/03092020-covid-19-faqs-508.pdf>).

¹ Patel A, Jernigan DB. Initial Public Health Response and Interim Clinical Guidance for the 2019 Novel Coronavirus Outbreak—United States, December 31, 2019–February 4, 2020. *MMWR Morb Mortal Wkly Rep* 2020;69:140–146. DOI <https://dx.doi.org/10.15585/mmwr.mm6905e1>.

CMGs and account for the existence of any relevant comorbidities.

The Grouper software produces a five-character CMG number. The first character is an alphabetic character that indicates the comorbidity tier. The last four characters are numeric characters that represent the distinct CMG number. A free download of the Grouper software is available on the CMS website at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Software.html>. The Grouper software is also embedded in the internet Quality Improvement and Evaluation System (iQIES) User tool available in iQIES at <https://www.cms.gov/medicare/quality-safety-oversight-general-information/iqies>.

Once a Medicare Part A FFS patient is discharged, the IRF submits a Medicare claim as a Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191, enacted on August 21, 1996) –compliant electronic claim or, if the Administrative Simplification Compliance Act of 2002 (ASCA) (Pub. L. 107–105, enacted on December 27, 2002) permits, a paper claim (a UB–04 or a CMS–1450 as appropriate) using the five-character CMG number and sends it to the appropriate Medicare Administrative Contractor (MAC). In addition, once a MA patient is discharged, in accordance with the Medicare Claims Processing Manual, chapter 3, section 20.3 (Pub. 100–04), hospitals (including IRFs) must submit an informational-only bill (type of bill (TOB) 111), which includes Condition Code 04 to their MAC. This will ensure that the MA days are included in the hospital’s Supplemental Security Income (SSI) ratio (used in calculating the IRF LIP adjustment) for FY 2007 and beyond. Claims submitted to Medicare must comply with both ASCA and HIPAA.

Section 3 of the ASCA amended section 1862(a) of the Act by adding paragraph (22), which requires the Medicare program, subject to section 1862(h) of the Act, to deny payment under Part A or Part B for any expenses for items or services for which a claim is submitted other than in an electronic form specified by the Secretary. Section 1862(h) of the Act, in turn, provides that the Secretary shall waive such denial in situations in which there is no method available for the submission of claims in an electronic form or the entity submitting the claim is a small provider. In addition, the Secretary also has the authority to waive such denial in such unusual cases as the Secretary finds appropriate. For more information, see

the “Medicare Program; Electronic Submission of Medicare Claims” final rule (70 FR 71008). Our instructions for the limited number of Medicare claims submitted on paper are available at <http://www.cms.gov/manuals/downloads/clm104c25.pdf>.

Section 3 of the ASCA operates in the context of the administrative simplification provisions of HIPAA, which include, among others, the requirements for transaction standards and code sets codified in 45 CFR part 160 and part 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered healthcare providers, to conduct covered electronic transactions according to the applicable transaction standards. (See the CMS program claim memoranda at <http://www.cms.gov/ElectronicBillingEDITrans/> and listed in the addenda to the Medicare Intermediary Manual, Part 3, section 3600).

The MAC processes the claim through its software system. This software system includes pricing programming called the “Pricer” software. The Pricer software uses the CMG number, along with other specific claim data elements and provider-specific data, to adjust the IRF’s prospective payment for interrupted stays, transfers, short stays, and deaths, and then applies the applicable adjustments to account for the IRF’s wage index, percentage of low-income patients, rural location, and outlier payments. For discharges occurring on or after October 1, 2005, the IRF PPS payment also reflects the teaching status adjustment that became effective as of FY 2006, as discussed in the FY 2006 IRF PPS final rule (70 FR 47880).

D. Advancing Health Information Exchange

The Department of Health and Human Services (HHS) has a number of initiatives designed to encourage and support the adoption of interoperable health information technology and to promote nationwide health information exchange to improve health care and patient access to their electronic health information.

To further interoperability in post-acute care settings, CMS and the Office of the National Coordinator for Health Information Technology (ONC) participate in the Post-Acute Care Interoperability Workgroup (PACIO) to facilitate collaboration with industry stakeholders to develop Fast Healthcare Interoperability Resources® (FHIR) standards. These standards could support the exchange and reuse of

patient assessment data derived from the post-acute care (PAC) setting assessment tools, such as the Minimum Data Set (MDS), Inpatient Rehabilitation Facility–Patient Assessment Instrument (IRF–PAI), Long Term Care Hospital (LTCH) Continuity Assessment Record and Evaluation (CARE) Data Set (LCDS), Outcome and Assessment Information Set (OASIS), and other sources.^{4,5} The PACIO Project has focused on HL7 FHIR implementation guides for functional status, cognitive status and new use cases on advance directives, re-assessment timepoints, and Speech, Language, Swallowing, Cognitive communication and Hearing (SPLASCH) pathology.⁶ We encourage PAC provider and health information technology (IT) vendor participation as the efforts advance.

The CMS Data Element Library (DEL) continues to be updated and serves as a resource for PAC assessment data elements and their associated mappings to health IT standards, such as Logical Observation Identifiers Names and Codes (LOINC) and Systematized Nomenclature of Medicine Clinical Terms (SNOMED).⁷ The DEL furthers CMS’ goal of data standardization and interoperability. These interoperable data elements can reduce provider burden by allowing the use and exchange of healthcare data; supporting provider exchange of electronic health information for care coordination, person-centered care; and supporting real-time, data driven, clinical decision-making.^{8,9} Standards in the DEL can be

⁴ HL7 FHIR Release 4. Available at <https://www.hl7.org/fhir/>.

⁵ HL7 FHIR. PACIO Functional Status Implementation Guide. Available at <https://paciowg.github.io/functional-status-ig/>.

⁶ The IMPACT Act (Pub. L. 113–185) requires the reporting of standardized patient assessment data with regard to quality measures and standardized patient assessment data elements. The Act also requires the submission of data pertaining to measure domains of resource use, and other domains. In addition, the IMPACT Act requires assessment data to be standardized and interoperable to allow for exchange of the data among post-acute providers and other providers. The Act intends for standardized post-acute care data to improve Medicare beneficiary outcomes through shared-decision making, care coordination, and enhanced discharge planning.

⁷ Centers for Medicare & Medicaid Services. Newsroom. Fact sheet: CMS Data Element Library Fact Sheet. June 21, 2018. Available at <https://www.cms.gov/newsroom/fact-sheets/cms-data-element-library-fact-sheet>.

⁸ Centers for Medicare & Medicaid Services. Health Informatics and Interoperability Group. Policies and Technology for Interoperability and Burden Reduction. Available at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Interoperability/index>.

⁹ Bates, David W. and Lipika Samal. “Interoperability: What Is It, How Can We Make It Work for Clinicians, and How Should We Measure

referenced on the CMS website (<https://del.cms.gov/DELWeb/pubHome>) and in the ONC Interoperability Standards Advisory (ISA). The 2022 ISA is available at <https://www.healthit.gov/isa/sites/isa/files/inline-files/2022-ISA-Reference-Edition.pdf>.

The 21st Century Cures Act (Cures Act), (Pub L. 114–255, enacted December 13, 2016) requires HHS to take new steps to enable the electronic sharing of health information and to further interoperability for providers and settings across the care continuum. Section 4003 of the Cures Act required HHS to take steps to advance interoperability through the development of a trusted exchange framework and common agreement aimed at establishing a universal floor of interoperability across the country. On January 18, 2022, ONC announced a significant milestone by releasing the Trusted Exchange Framework and Common Agreement Version 1. The Trusted Exchange Framework is a set of non-binding principles for health information exchange, and the Common Agreement is a contract that advances those principles. The Common Agreement and the incorporated by reference Qualified Health Information Network Technical Framework Version 1 establish the technical infrastructure model and governing approach for different health information networks and their users to securely share clinical information with each other, all under commonly agreed to terms. The Common Agreement follows a network-of-networks structure, which allows for connection at different levels and is inclusive of many different types of entities, such as health information networks, healthcare practices, hospitals, public health agencies, and Individual Access Services (IAS) Providers.¹⁰ For more information, we refer readers to <https://www.healthit.gov/topic/interoperability/>

It in the Future?." Health services research vol. 53,5 (2018): 3270–3277. doi:10.1111/1475-6773.12852.

¹⁰The Common Agreement defines Individual Access Services (IAS) as "with respect to the Exchange Purposes definition, the services provided utilizing the Connectivity Services, to the extent consistent with Applicable Law, to an Individual with whom the QHIN, Participant, or Subparticipant has a Direct Relationship to satisfy that Individual's ability to access, inspect, or obtain a copy of that Individual's Required Information that is then maintained by or for any QHIN, Participant, or Subparticipant." The Common Agreement defines "IAS Provider" as: "Each QHIN, Participant, and Subparticipant that offers Individual Access Services." See Common Agreement for Nationwide Health Information Interoperability Version 1, at 7 (Jan. 2022), https://www.healthit.gov/sites/default/files/page/2022-01/Common_Agreement_for_Nationwide_Health_Information_Interoperability_Version_1.pdf.

trusted-exchange-framework-and-common-agreement.

We invite providers to learn more about these important developments and how they are likely to affect IRFs.

III. Summary of Provisions of the Proposed Rule

In this proposed rule, we are proposing to update the IRF PPS for FY 2023 and the IRF QRP for FY 2025.

The proposed policy changes and updates to the IRF prospective payment rates for FY 2023 are as follows:

- Update the CMG relative weights and average length of stay values for FY 2023, in a budget neutral manner, as discussed in section IV. of this proposed rule.
- Update the IRF PPS payment rates for FY 2023 by the market basket increase factor, based upon the most current data available, with a productivity adjustment required by section 1886(j)(3)(C)(ii)(I) of the Act, as described in section V. of this proposed rule.
- Describe the establishment of a permanent cap policy in order to smooth the impact of year-to-year changes in IRF payments related to certain changes to the IRF wage index, as discussed in section V. of this proposed rule.
- Update the FY 2023 IRF PPS payment rates by the FY 2023 wage index and the labor-related share in a budget-neutral manner, as discussed in section V. of this proposed rule.
- Describe the calculation of the IRF standard payment conversion factor for FY 2023, as discussed in section V. of this proposed rule.
- Update the outlier threshold amount for FY 2023, as discussed in section VI. of this proposed rule.
- Update the cost-to-charge ratio (CCR) ceiling and urban/rural average CCRs for FY 2023, as discussed in section VI. of this proposed rule.

• Describe the proposed codification of CMS' existing teaching status adjustment policy and proposed clarifications and updates of the IRF teaching status adjustment policy with respect to IRF hospital closures and displaced residents, as discussed in section VII. of this proposed rule.

• Solicit comments on the methodology used to update the facility-level adjustment factors, as discussed in section VIII. of this proposed rule.

• Solicit comments on the IRF transfer payment policy, as discussed in section IX. of this proposed rule.

We also propose updates to the IRF QRP and request information in section VII. of this proposed rule as follows:

• Update data reporting requirements under the IRF QRP beginning with FY 2025.

• Request information on (1) future measure concepts under consideration for the IRF QRP; (2) inclusion of a future dQM for the IRF QRP; and (3) CMS' overarching principles for measuring healthcare disparities across CMS Quality Programs, including the IRF QRP.

IV. Proposed Update to the Case-Mix Group (CMG) Relative Weights and Average Length of Stay (ALOS) Values for FY 2023

As specified in § 412.620(b)(1), we calculate a relative weight for each CMG that is proportional to the resources needed by an average inpatient rehabilitation case in that CMG. For example, cases in a CMG with a relative weight of 2, on average, will cost twice as much as cases in a CMG with a relative weight of 1. Relative weights account for the variance in cost per discharge due to the variance in resource utilization among the payment groups, and their use helps to ensure that IRF PPS payments support beneficiary access to care, as well as provider efficiency.

In this proposed rule, we propose to update the CMG relative weights and ALOS values for FY 2023. Typically, we use the most recent available data to update the CMG relative weights and average lengths of stay. For FY 2023, we are proposing to use the FY 2021 IRF claims and FY 2020 IRF cost report data. These data are the most current and complete data available at this time. Currently, only a small portion of the FY 2021 IRF cost report data are available for analysis, but the majority of the FY 2021 IRF claims data are available for analysis. We are proposing that if more recent data become available after the publication of this proposed rule and before the publication of the final rule, we would use such data to determine the FY 2023 CMG relative weights and ALOS values in the final rule.

We are proposing to apply these data using the same methodologies that we have used to update the CMG relative weights and ALOS values each FY since we implemented an update to the methodology. The detailed CCR data from the cost reports of IRF provider units of primary acute care hospitals is used for this methodology, instead of CCR data from the associated primary care hospitals, to calculate IRFs' average costs per case, as discussed in the FY 2009 IRF PPS final rule (73 FR 46372). In calculating the CMG relative weights, we use a hospital-specific relative value

method to estimate operating (routine and ancillary services) and capital costs of IRFs. The process to calculate the CMG relative weights for this proposed rule is as follows:

Step 1. We estimate the effects that comorbidities have on costs.

Step 2. We adjust the cost of each Medicare discharge (case) to reflect the effects found in the first step.

Step 3. We use the adjusted costs from the second step to calculate CMG relative weights, using the hospital-specific relative value method.

Step 4. We normalize the FY 2023 CMG relative weights to the same average CMG relative weight from the CMG relative weights implemented in the FY 2022 IRF PPS final rule (86 FR 42362).

Consistent with the methodology that we have used to update the IRF classification system in each instance in the past, we propose to update the CMG relative weights for FY 2023 in such a

way that total estimated aggregate payments to IRFs for FY 2023 are the same with or without the changes (that is, in a budget-neutral manner) by applying a budget neutrality factor to the standard payment amount. To calculate the appropriate budget neutrality factor for use in updating the FY 2023 CMG relative weights, we use the following steps:

Step 1. Calculate the estimated total amount of IRF PPS payments for FY 2023 (with no changes to the CMG relative weights).

Step 2. Calculate the estimated total amount of IRF PPS payments for FY 2023 by applying the proposed changes to the CMG relative weights (as discussed in this proposed rule).

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2 to determine the budget neutrality factor of 0.9979 that would maintain the same total estimated aggregate payments in FY 2023 with and

without the proposed changes to the CMG relative weights.

Step 4. Apply the budget neutrality factor from step 3 to the FY 2023 IRF PPS standard payment amount after the application of the budget-neutral wage adjustment factor.

In section V.E. of this proposed rule, we discuss the proposed use of the existing methodology to calculate the proposed standard payment conversion factor for FY 2023.

In Table 2, “Proposed Relative Weights and Average Length of Stay Values for Case-Mix Groups,” we present the proposed CMGs, the comorbidity tiers, the corresponding relative weights, and the ALOS values for each CMG and tier for FY 2023. The ALOS for each CMG is used to determine when an IRF discharge meets the definition of a short-stay transfer, which results in a per diem case level adjustment.

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TABLE 2: Proposed Relative Weights and Average Length of Stay Values for the Case-Mix Groups

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
0101	Stroke M >=72.50	0.9925	0.8649	0.7867	0.7457	10	10	10	9
0102	Stroke M >=63.50 and M <72.50	1.2547	1.0934	0.9946	0.9428	12	13	11	11
0103	Stroke M >=50.50 and M <63.50	1.6297	1.4202	1.2918	1.2246	14	14	14	13
0104	Stroke M >=41.50 and M <50.50	2.0846	1.8166	1.6524	1.5664	18	18	17	17
0105	Stroke M <41.50 and A >=84.50	2.5116	2.1887	1.9908	1.8872	22	22	21	20
0106	Stroke M <41.50 and A <84.50	2.8661	2.4977	2.2719	2.1537	25	26	23	23
0201	Traumatic brain injury M >=73.50	1.1188	0.9016	0.8174	0.7674	11	10	9	9
0202	Traumatic brain injury M >=61.50 and M <73.50	1.4040	1.1314	1.0257	0.9630	12	13	11	11
0203	Traumatic brain injury M >=49.50 and M <61.50	1.7227	1.3882	1.2585	1.1816	14	15	13	13
0204	Traumatic brain injury M >=35.50 and M <49.50	2.1283	1.7151	1.5548	1.4598	19	18	16	16
0205	Traumatic brain injury M <35.50	2.6967	2.1731	1.9701	1.8496	28	23	20	18
0301	Non-traumatic brain injury M >=65.50	1.1968	0.9648	0.8939	0.8329	11	10	10	9
0302	Non-traumatic brain injury M >=52.50 and M <65.50	1.5416	1.2427	1.1513	1.0728	13	13	12	12
0303	Non-traumatic brain injury M >=42.50 and M <52.50	1.8527	1.4935	1.3837	1.2894	15	15	14	14
0304	Non-traumatic brain injury M <42.50 and A >=78.50	2.1557	1.7378	1.6100	1.5002	19	18	16	15
0305	Non-traumatic brain injury M <42.50 and A <78.50	2.3513	1.8955	1.7561	1.6364	20	19	17	17
0401	Traumatic spinal cord injury M >=56.50	1.3351	1.0963	1.0476	0.9612	12	11	12	11
0402	Traumatic spinal cord injury M >=47.50 and M <56.50	1.7137	1.4071	1.3446	1.2337	17	15	15	14
0403	Traumatic spinal cord injury M >=41.50 and M <47.50	2.1227	1.7430	1.6656	1.5282	17	19	17	17
0404	Traumatic spinal cord injury M <31.50 and A <61.50	3.1577	2.5928	2.4777	2.2733	22	27	26	22
0405	Traumatic spinal cord injury M >=31.50 and M <41.50	2.6222	2.1531	2.0575	1.8878	23	23	21	20
0406	Traumatic spinal cord injury M >=24.50 and M <31.50 and A >=61.50	3.4284	2.8151	2.6901	2.4682	37	29	25	27
0407	Traumatic spinal cord injury M <24.50 and A >=61.50	4.3072	3.5367	3.3796	3.1008	47	36	33	32
0501	Non-traumatic spinal cord injury M >=60.50	1.2513	0.9862	0.9303	0.8656	11	11	10	10
0502	Non-traumatic spinal cord injury M >=53.50 and M <60.50	1.5504	1.2219	1.1527	1.0725	16	13	12	12
0503	Non-traumatic spinal cord injury M >=48.50 and M <53.50	1.7832	1.4054	1.3257	1.2335	15	14	14	14
0504	Non-traumatic spinal cord injury M >=39.50 and M <48.50	2.1593	1.7019	1.6054	1.4937	19	18	17	16
0505	Non-traumatic spinal cord injury M <39.50	2.9652	2.3370	2.2046	2.0512	26	24	22	21
0601	Neurological M >=64.50	1.3467	1.0065	0.9546	0.8514	11	10	10	10
0602	Neurological M >=52.50 and M <64.50	1.6786	1.2546	1.1899	1.0613	13	13	12	12
0603	Neurological M >=43.50 and M <52.50	2.0028	1.4968	1.4196	1.2662	16	15	14	13
0604	Neurological M <43.50	2.4823	1.8552	1.7596	1.5694	20	18	17	16
0701	Fracture of lower extremity M >=61.50	1.2411	0.9617	0.9179	0.8506	11	11	10	10

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
0702	Fracture of lower extremity M >=52.50 and M <61.50	1.5298	1.1853	1.1313	1.0484	13	13	12	12
0703	Fracture of lower extremity M >=41.50 and M <52.50	1.9047	1.4759	1.4086	1.3054	16	15	15	14
0704	Fracture of lower extremity M <41.50	2.2917	1.7757	1.6948	1.5706	19	18	17	16
0801	Replacement of lower-extremity joint M >=63.50	1.1275	0.9613	0.8690	0.7954	10	10	9	9
0802	Replacement of lower-extremity joint M >=57.50 and M <63.50	1.2974	1.1061	1.0000	0.9153	11	11	10	10
0803	Replacement of lower-extremity joint M >=51.50 and M <57.50	1.4361	1.2244	1.1069	1.0131	12	13	12	11
0804	Replacement of lower-extremity joint M >=42.50 and M <51.50	1.6466	1.4038	1.2691	1.1616	14	14	13	12
0805	Replacement of lower-extremity joint M <42.50	1.9673	1.6772	1.5163	1.3878	16	16	15	14
0901	Other orthopedic M >=63.50	1.2057	0.9636	0.8944	0.8246	11	11	10	9
0902	Other orthopedic M >=51.50 and M <63.50	1.5217	1.2162	1.1288	1.0408	13	13	12	11
0903	Other orthopedic M >=44.50 and M <51.50	1.8095	1.4462	1.3423	1.2376	15	15	14	13
0904	Other orthopedic M <44.5	2.1120	1.6879	1.5667	1.4445	17	17	16	15
1001	Amputation lower extremity M >=64.50	1.2249	1.0603	0.9236	0.8475	11	12	10	10
1002	Amputation lower extremity M >=55.50 and M <64.50	1.5178	1.3139	1.1444	1.0502	14	13	12	12
1003	Amputation lower extremity M >=47.50 and M <55.50	1.7988	1.5571	1.3563	1.2446	15	16	14	14
1004	Amputation lower extremity M <47.50	2.2548	1.9519	1.7001	1.5601	18	20	17	16
1101	Amputation non-lower extremity M >=58.50	1.3654	1.3654	1.0059	0.7976	13	13	11	11
1102	Amputation non-lower extremity M >=52.50 and M <58.50	1.6779	1.6779	1.2361	0.9801	14	15	13	12
1103	Amputation non-lower extremity M <52.50	2.1932	2.1932	1.6158	1.2812	19	17	16	14
1201	Osteoarthritis M >=61.50	1.3177	1.0415	0.9341	0.8331	10	10	11	9
1202	Osteoarthritis M >=49.50 and M <61.50	1.7152	1.3557	1.2158	1.0845	14	13	12	12
1203	Osteoarthritis M <49.50 and A >=74.50	2.1200	1.6758	1.5028	1.3405	16	15	15	14
1204	Osteoarthritis M <49.50 and A <74.50	2.2232	1.7573	1.5759	1.4057	16	15	16	16
1301	Rheumatoid other arthritis M >=62.50	1.2188	0.9151	0.8690	0.8576	9	10	9	9
1302	Rheumatoid other arthritis M >=51.50 and M <62.50	1.6186	1.2153	1.1541	1.1389	12	12	11	12
1303	Rheumatoid other arthritis M >=44.50 and M <51.50 and A >=64.50	1.8950	1.4227	1.3511	1.3333	14	14	14	14
1304	Rheumatoid other arthritis M <44.50 and A >=64.50	2.3349	1.7530	1.6647	1.6429	15	17	17	16
1305	Rheumatoid other arthritis M <51.50 and A <64.50	2.0923	1.5709	1.4918	1.4722	16	15	15	15
1401	Cardiac M >=68.50	1.1391	0.9005	0.8301	0.7592	10	10	9	9
1402	Cardiac M >=55.50 and M <68.50	1.4510	1.1471	1.0574	0.9671	13	12	11	11
1403	Cardiac M >=45.50 and M <55.50	1.7577	1.3896	1.2808	1.1715	15	14	13	13
1404	Cardiac M <45.50	2.1542	1.7030	1.5698	1.4358	18	17	16	15
1501	Pulmonary M >=68.50	1.3050	1.0215	0.9761	0.9439	11	10	10	10
1502	Pulmonary M >=56.50 and M <68.50	1.5932	1.2471	1.1917	1.1523	13	12	12	12

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
1503	Pulmonary M \geq 45.50 and M <56.50	1.8631	1.4584	1.3936	1.3476	16	14	13	13
1504	Pulmonary M <45.50	2.2211	1.7387	1.6614	1.6065	21	17	16	15
1601	Pain syndrome M \geq 65.50	1.1344	0.8838	0.8577	0.7884	9	10	10	9
1602	Pain syndrome M \geq 58.50 and M <65.50	1.3362	1.0409	1.0102	0.9286	10	11	11	10
1603	Pain syndrome M \geq 43.50 and M <58.50	1.6219	1.2635	1.2263	1.1271	14	13	13	13
1604	Pain syndrome M <43.50	1.9754	1.5389	1.4935	1.3728	13	14	16	14
1701	Major multiple trauma without brain or spinal cord injury M \geq 57.50	1.3007	1.0284	0.9660	0.8785	11	10	11	10
1702	Major multiple trauma without brain or spinal cord injury M \geq 50.50 and M <57.50	1.6141	1.2762	1.1988	1.0902	13	14	13	12
1703	Major multiple trauma without brain or spinal cord injury M \geq 41.50 and M <50.50	1.9052	1.5063	1.4150	1.2868	16	15	15	14
1704	Major multiple trauma without brain or spinal cord injury M \geq 36.50 and M <41.50	2.1637	1.7107	1.6069	1.4614	17	18	17	15
1705	Major multiple trauma without brain or spinal cord injury M <36.50	2.4707	1.9534	1.8349	1.6687	23	19	19	17
1801	Major multiple trauma with brain or spinal cord injury M \geq 67.50	1.2112	0.9565	0.8907	0.8256	13	11	10	10
1802	Major multiple trauma with brain or spinal cord injury M \geq 55.50 and M <67.50	1.4573	1.1509	1.0717	0.9934	15	13	11	12
1803	Major multiple trauma with brain or spinal cord injury M \geq 45.50 and M <55.50	1.8392	1.4525	1.3526	1.2537	17	16	15	14
1804	Major multiple trauma with brain or spinal cord injury M \geq 40.50 and M <45.50	2.1284	1.6809	1.5653	1.4509	18	17	16	15
1805	Major multiple trauma with brain or spinal cord injury M \geq 30.50 and M <40.50	2.5424	2.0078	1.8697	1.7331	22	22	19	18
1806	Major multiple trauma with brain or spinal cord injury M <30.50	3.4682	2.7389	2.5505	2.3641	38	27	24	24
1901	Guillain-Barré M \geq 66.50	1.1559	1.0349	0.9948	0.9308	11	13	12	10
1902	Guillain-Barré M \geq 51.50 and M <66.50	1.4513	1.2994	1.2490	1.1686	14	13	14	13
1903	Guillain-Barré M \geq 38.50 and M <51.50	2.1262	1.9036	1.8298	1.7120	18	20	18	19
1904	Guillain-Barré M <38.50	3.2810	2.9375	2.8237	2.6419	31	31	28	26
2001	Miscellaneous M \geq 66.50	1.2012	0.9694	0.8922	0.8118	10	10	10	9
2002	Miscellaneous M \geq 55.50 and M <66.50	1.4875	1.2005	1.1049	1.0053	13	12	12	11
2003	Miscellaneous M \geq 46.50 and M <55.50	1.7674	1.4264	1.3128	1.1944	15	14	13	13
2004	Miscellaneous M <46.50 and A \geq 77.50	2.0809	1.6794	1.5457	1.4063	18	17	16	15
2005	Miscellaneous M <46.50 and A <77.50	2.2291	1.7990	1.6558	1.5064	19	18	16	15
2101	Burns M \geq 52.50	1.5991	1.1452	1.1279	1.0538	14	13	12	11
2102	Burns M <52.50	2.4689	1.7682	1.7415	1.6270	27	18	16	16
5001	Short-stay cases, length of stay is 3 days or fewer				0.1700				3

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
5101	Expired, orthopedic, length of stay is 13 days or fewer				0.7386				8
5102	Expired, orthopedic, length of stay is 14 days or more				1.8869				17
5103	Expired, not orthopedic, length of stay is 15 days or fewer				0.8943				9
5104	Expired, not orthopedic, length of stay is 16 days or more				2.2732				21

Generally, updates to the CMG relative weights result in some increases and some decreases to the CMG relative weight values. Table 2 shows how we estimate that the application of the proposed revisions for FY 2023 would affect particular CMG relative weight

values, which would affect the overall distribution of payments within CMGs and tiers. We note that, because we propose to implement the CMG relative weight revisions in a budget-neutral manner (as previously described), total estimated aggregate payments to IRF's

for FY 2023 would not be affected as a result of the proposed CMG relative weight revisions. However, the proposed revisions would affect the distribution of payments within CMGs and tiers.

TABLE 3: Distributional Effects of the Changes to the CMG Relative Weights

Percentage Change in CMG Relative Weights	Number of Cases Affected	Percentage of Cases Affected
Increased by 15% or more	64	0.0%
Increased by between 5% and 15%	1,227	0.3%
Changed by less than 5%	370,829	99.3%
Decreased by between 5% and 15%	1,320	0.4%
Decreased by 15% or more	11	0.0%

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As shown in Table 3, 99.3 percent of all IRF cases are in CMGs and tiers that would experience less than a 5 percent change (either increase or decrease) in the CMG relative weight value as a result of the proposed revisions for FY 2023. The proposed changes in the ALOS values for FY 2023, compared with the FY 2022 ALOS values, are small and do not show any particular trends in IRF length of stay patterns.

We invite public comment on our proposed updates to the CMG relative weights and ALOS values for FY 2023.

V. Proposed FY 2023 IRF PPS Payment Update

A. Background

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services for which payment is made under the IRF PPS. According to section 1886(j)(3)(A)(i) of the Act, the increase factor shall be used to update the IRF prospective payment rates for each FY. Section 1886(j)(3)(C)(ii)(I) of the Act requires the application of the productivity

adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Thus, in this proposed rule, we are proposing to update the IRF PPS payments for FY 2023 by a market basket increase factor as required by section 1886(j)(3)(C) of the Act based upon the most current data available, with a productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act.

We have utilized various market baskets through the years in the IRF PPS. For a discussion of these market baskets, we refer readers to the FY 2016 IRF PPS final rule (80 FR 47046).

In FY 2016, we finalized the use of a 2012-based IRF market basket, using Medicare cost report data for both freestanding and hospital-based IRF's (80 FR 47049 through 47068). Beginning with FY 2020, we finalized a rebased and revised IRF market basket to reflect a 2016 base year. The FY 2020 IRF PPS final rule (84 FR 39071 through 39086) contains a complete discussion of the development of the 2016-based IRF market basket.

B. Proposed FY 2023 Market Basket Update and Productivity Adjustment

For FY 2023 (that is, beginning October 1, 2022 and ending September 30, 2023), we are proposing to update the IRF PPS payments by a market basket increase factor as required by section 1886(j)(3)(C) of the Act, with a productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act. For FY 2023, we are proposing to use the same methodology described in the FY 2022 IRF PPS final rule (86 FR 42373 through 42376).

Consistent with historical practice, we are proposing to estimate the market basket update for the IRF PPS for FY 2023 based on IHS Global Inc.'s (IGI's) forecast using the most recent available data. Based on IGI's fourth quarter 2021 forecast with historical data through the third quarter of 2021, the proposed 2016-based IRF market basket increase factor for FY 2023 is projected to be 3.2 percent. We are also proposing that if more recent data become available after the publication of the proposed rule and before the publication of the final rule (for example, a more recent estimate of the market basket update or productivity adjustment), we would use

such data, if appropriate, to determine the FY 2023 market basket update in the final rule.

According to section 1886(j)(3)(C)(i) of the Act, the Secretary shall establish an increase factor based on an appropriate percentage increase in a market basket of goods and services. Section 1886(j)(3)(C)(ii) of the Act then requires that, after establishing the increase factor for a FY, the Secretary shall reduce such increase factor for FY 2012 and each subsequent FY, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Section 1886(b)(3)(B)(xi)(II) of the Act sets forth the definition of this productivity adjustment. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide, private nonfarm business multifactor productivity (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost reporting period, or other annual period) (the “productivity adjustment”). The U.S. Department of Labor’s Bureau of Labor Statistics (BLS) publishes the official measures of productivity for the U.S. economy. We note that previously the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) of the Act, was published by BLS as private nonfarm business multifactor productivity. Beginning with the November 18, 2021 release of productivity data, BLS replaced the term multifactor productivity (MFP) with total factor productivity (TFP). BLS noted that this is a change in terminology only and will not affect the data or methodology. As a result of the BLS name change, the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) is now published by BLS as private nonfarm business total factor productivity. However, as mentioned above, the data and methods are unchanged. Please see www.bls.gov for the BLS historical published TFP data. A complete description of IGI’s TFP projection methodology is available on the CMS website at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch>. In addition, in the FY 2022 IRF final rule (86 FR 42374), we noted that effective with FY 2022 and forward, CMS changed the name of this adjustment to refer to it as the productivity adjustment rather than the MFP adjustment.

Using IGI’s fourth quarter 2021 forecast, the 10-year moving average growth of TFP for FY 2023 is projected to be 0.4 percent. Thus, in accordance with section 1886(j)(3)(C) of the Act, we

are proposing to base the FY 2023 market basket update, which is used to determine the applicable percentage increase for the IRF payments, on IGI’s fourth quarter 2021 forecast of the 2016-based IRF market basket. We are proposing to then reduce this percentage increase by the estimated productivity adjustment for FY 2023 of 0.4 percentage point (the 10-year moving average growth of TFP for the period ending FY 2023 based on IGI’s fourth quarter 2021 forecast). Therefore, the proposed FY 2023 IRF update is equal to 2.8 percent (3.2 percent market basket update reduced by the 0.4 percentage point productivity adjustment). Furthermore, we are proposing that if more recent data become available after the publication of the proposed rule and before the publication of the final rule (for example, a more recent estimate of the market basket and/or productivity adjustment), we would use such data, if appropriate, to determine the FY 2023 market basket update and productivity adjustment in the final rule.

For FY 2023, the Medicare Payment Advisory Commission (MedPAC) recommends that we reduce IRF PPS payment rates by 5 percent.¹¹ As discussed, and in accordance with sections 1886(j)(3)(C) and 1886(j)(3)(D) of the Act, the Secretary is proposing to update the IRF PPS payment rates for FY 2023 by a productivity-adjusted IRF market basket increase factor of 2.8 percent. Section 1886(j)(3)(C) of the Act does not provide the Secretary with the authority to apply a different update factor to IRF PPS payment rates for FY 2023.

We invite public comment on our proposals for the FY 2023 market basket update and productivity adjustment.

C. Proposed Labor-Related Share for FY 2023

Section 1886(j)(6) of the Act specifies that the Secretary is to adjust the proportion (as estimated by the Secretary from time to time) of IRFs’ costs that are attributable to wages and wage-related costs, of the prospective payment rates computed under section 1886(j)(3) of the Act, for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for such facilities. The labor-related share is determined by identifying the national average

proportion of total costs that are related to, influenced by, or vary with the local labor market. We are proposing to continue to classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market.

Based on our definition of the labor-related share and the cost categories in the 2016-based IRF market basket, we are proposing to calculate the labor-related share for FY 2023 as the sum of the FY 2023 relative importance of Wages and Salaries, Employee Benefits, Professional Fees: Labor-related, Administrative and Facilities Support Services, Installation, Maintenance, and Repair Services, All Other: Labor-related Services, and a portion of the Capital-Related relative importance from the 2016-based IRF market basket. For more details regarding the methodology for determining specific cost categories for inclusion in the 2016-based IRF labor-related share, see the FY 2020 IRF PPS final rule (84 FR 39087 through 39089).

The relative importance reflects the different rates of price change for these cost categories between the base year (2016) and FY 2023. Based on IGI’s fourth quarter 2021 forecast of the 2016-based IRF market basket, the sum of the FY 2023 relative importance for Wages and Salaries, Employee Benefits, Professional Fees: Labor-related, Administrative and Facilities Support Services, Installation Maintenance & Repair Services, and All Other: Labor-related Services is 69.4 percent. We are proposing that the portion of Capital-Related costs that are influenced by the local labor market is 46 percent. Since the relative importance for Capital-Related costs is 8.2 percent of the 2016-based IRF market basket for FY 2023, we are proposing to take 46 percent of 8.2 percent to determine the labor-related share of Capital-Related costs for FY 2022 of 3.8 percent. Therefore, we are proposing a total labor-related share for FY 2023 of 73.2 percent (the sum of 69.4 percent for the proposed labor-related share of operating costs and 3.8 percent for the proposed labor-related share of Capital-Related costs). We are proposing that if more recent data become available after publication of the proposed rule and before the publication of the final rule (for example, a more recent estimate of the labor-related share), we would use such data, if appropriate, to determine the FY 2023 IRF labor-related share in the final rule.

Table 4 shows the current estimate of the proposed FY 2023 labor-related share and the FY 2022 final labor-related share using the 2016-based IRF market basket relative importance.

¹¹ https://www.medpac.gov/wp-content/uploads/2022/03/Mar22_MedPAC_ReportToCongress_SEC.pdf.

TABLE 4: FY 2023 Proposed IRF Labor-Related Share and FY 2022 IRF Labor-Related Share

	FY 2023 Proposed Labor-Related Share ¹	FY 2022 Final Labor Related Share ²
Wages and Salaries	48.8	48.3
Employee Benefits	11.3	11.4
Professional Fees: Labor-Related ³	5.0	5.0
Administrative and Facilities Support Services	0.8	0.8
Installation, Maintenance, and Repair Services	1.6	1.6
All Other: Labor-Related Services	1.9	1.9
Subtotal	69.4	69.0
Labor-related portion of Capital-Related (46%)	3.8	3.9
Total Labor-Related Share	73.2	72.9

¹ Based on the 2016-based IRF market basket relative importance, IGI 4th quarter 2021 forecast.

² Based on the 2016-based IRF market basket relative importance as published in the **Federal Register** (86 FR 42377).

³ Includes all contract advertising and marketing costs and a portion of accounting, architectural, engineering, legal, management consulting, and home office contract labor costs.

We invite public comments on the proposed labor-related share for FY 2023.

D. Proposed Wage Adjustment for FY 2023

1. Background

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion of rehabilitation facilities' costs attributable to wages and wage-related costs (as estimated by the Secretary from time to time) by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for those facilities. The Secretary is required to update the IRF PPS wage index on the basis of information available to the Secretary on the wages and wage-related costs to furnish rehabilitation services. Any adjustment or updates made under section 1886(j)(6) of the Act for a FY are made in a budget-neutral manner.

For FY 2023, we propose to maintain the policies and methodologies described in the FY 2022 IRF PPS final rule (86 FR 42377) related to the labor market area definitions and the wage index methodology for areas with wage data. Thus, we propose to use the core based statistical areas (CBSAs) labor market area definitions and the FY 2023 pre-reclassification and pre-floor hospital wage index data. In accordance with section 1886(d)(3)(E) of the Act, the FY 2023 pre-reclassification and pre-floor hospital wage index is based on data submitted for hospital cost reporting periods beginning on or after October 1, 2018, and before October 1, 2019 (that is, FY 2019 cost report data).

The labor market designations made by the OMB include some geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation of the IRF PPS wage index. We propose to continue to use the same methodology discussed in the FY 2008 IRF PPS final rule (72 FR 44299) to address those geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation for the FY 2023 IRF PPS wage index.

We invite public comment on our proposals regarding the Wage Adjustment for FY 2023.

2. Core-Based Statistical Areas (CBSAs) for the FY 2023 IRF Wage Index

The wage index used for the IRF PPS is calculated using the pre-reclassification and pre-floor inpatient PPS (IPPS) wage index data and is assigned to the IRF on the basis of the labor market area in which the IRF is geographically located. IRF labor market areas are delineated based on the CBSAs established by the OMB. The CBSA delineations (which were implemented for the IRF PPS beginning with FY 2016) are based on revised OMB delineations issued on February 28, 2013, in OMB Bulletin No. 13–01. OMB Bulletin No. 13–01 established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas in the United States and Puerto Rico based on the 2010 Census, and provided guidance on the use of the delineations of these statistical areas using standards published in the June 28, 2010 **Federal Register** (75 FR 37246 through 37252). We refer readers to the FY 2016 IRF PPS

final rule (80 FR 47068 through 47076) for a full discussion of our implementation of the OMB labor market area delineations beginning with the FY 2016 wage index.

Generally, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. Additionally, OMB occasionally issues updates and revisions to the statistical areas in between decennial censuses to reflect the recognition of new areas or the addition of counties to existing areas. In some instances, these updates merge formerly separate areas, transfer components of an area from one area to another, or drop components from an area. On July 15, 2015, OMB issued OMB Bulletin No. 15–01, which provides minor updates to and supersedes OMB Bulletin No. 13–01 that was issued on February 28, 2013. The attachment to OMB Bulletin No. 15–01 provides detailed information on the update to statistical areas since February 28, 2013. The updates provided in OMB Bulletin No. 15–01 are based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2012 and July 1, 2013.

In the FY 2018 IRF PPS final rule (82 FR 36250 through 36251), we adopted the updates set forth in OMB Bulletin No. 15–01 effective October 1, 2017, beginning with the FY 2018 IRF wage index. For a complete discussion of the adoption of the updates set forth in OMB Bulletin No. 15–01, we refer readers to the FY 2018 IRF PPS final rule. In the FY 2019 IRF PPS final rule (83 FR 38527), we continued to use the OMB delineations that were adopted

beginning with FY 2016 to calculate the area wage indexes, with updates set forth in OMB Bulletin No. 15–01 that we adopted beginning with the FY 2018 wage index.

On August 15, 2017, OMB issued OMB Bulletin No. 17–01, which provided updates to and superseded OMB Bulletin No. 15–01 that was issued on July 15, 2015. The attachments to OMB Bulletin No. 17–01 provide detailed information on the update to statistical areas since July 15, 2015, and are based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2014 and July 1, 2015. In the FY 2020 IRF PPS final rule (84 FR 39090 through 39091), we adopted the updates set forth in OMB Bulletin No. 17–01 effective October 1, 2019, beginning with the FY 2020 IRF wage index.

On April 10, 2018, OMB issued OMB Bulletin No. 18–03, which superseded the August 15, 2017 OMB Bulletin No. 17–01, and on September 14, 2018, OMB issued OMB Bulletin No. 18–04, which superseded the April 10, 2018 OMB Bulletin No. 18–03. These bulletins established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of this bulletin may be obtained at <https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf>.

To this end, as discussed in the FY 2021 IRF PPS proposed (85 FR 22075 through 22079) and final (85 FR 48434 through 48440) rules, we adopted the revised OMB delineations identified in OMB Bulletin No. 18–04 (available at <https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf>) beginning October 1, 2020, including a 1-year transition for FY 2021 under which we applied a 5 percent cap on any decrease in an IRF's wage index compared to its wage index for the prior fiscal year (FY 2020). The updated OMB delineations more accurately reflect the contemporary urban and rural nature of areas across the country, and the use of such delineations allows us to determine more accurately the appropriate wage index and rate tables to apply under the IRF PPS. OMB issued further revised CBSA delineations in OMB Bulletin No. 20–01, on March 6, 2020 (available on the web at <https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf>). However, we determined that the changes in OMB Bulletin No. 20–01 do not impact the CBSA-based

labor market area delineations adopted in FY 2021. Therefore, CMS did not propose to adopt the revised OMB delineations identified in OMB Bulletin No. 20–01 for FY 2022, and for these reasons CMS is likewise not making such a proposal for FY 2023.

3. Proposed Permanent Cap on Wage Index Decreases

As discussed above in this section of the rule, we have proposed and finalized temporary transition policies in the past to mitigate significant changes to payments due to changes to the IRF PPS wage index. Specifically, for FY 2016 (80 FR 47068), we implemented a 50/50 blend for all geographic areas consisting of the wage index values computed using the then-current OMB area delineations and the wage index values computed using new area delineations based on OMB Bulletin No. 13–01. In FY 2021 (85 FR 48434), we implemented a 1-year transition to mitigate any negative effects of wage index changes by applying a 5 percent cap on any decrease in an IRF's wage index from the final wage index from FY 2020. We explained that we believed the 5-percent cap would provide greater transparency and would be administratively less complex than the prior methodology of applying a 50/50 blended wage index. We indicated that no cap would be applied to the reduction in the wage index for FY 2022, and that this transition approach struck an appropriate balance by providing a transition period to mitigate the resulting short-term instability and negative impacts on providers and time for them to adjust to their new labor market area delineations and wage index values.

In the FY 2022 final rule (86 FR 42378), commenters recommended CMS extend the transition period adopted in the FY 2021 IRF PPS final rule so that wage index values do not change by more than 5 percent from year-to-year to protect IRFs from large payment volatility. Because we did not propose to modify the transition policy that was finalized in the FY 2021 IRF PPS final rule, we did not extend the transition period for FY 2022. However, we acknowledged that certain changes to wage index policy may significantly affect Medicare payments. In addition, we reiterated that our policy principles with regard to the wage index include generally using the most current data and information available and providing that data and information, as well as any approaches to addressing any significant effects on Medicare payments resulting from these potential scenarios, in notice

and comment rulemaking. With these policy principles in mind, for this FY 2023 proposed rule we considered how best to address the potential scenarios about which commenters raised concerns in the FY 2022 final rule around IRF payment volatility; that is, scenarios in which changes to wage index policy may significantly affect Medicare payments.

In the past, we have established transition policies of limited duration to phase in significant changes to labor market areas. In taking this approach in the past, we sought to mitigate short-term instability and fluctuations that can negatively impact providers due to wage index changes. In accordance with the requirements of the IRF PPS wage index regulations at § 412.624(a)(2), we use an appropriate wage index based on the best available data, including the best available labor market area delineations, to adjust IRF PPS payments for wage differences. We have previously stated that, because the wage index is a relative measure of the value of labor in prescribed labor market areas, we believe it is important to implement new labor market area delineations with as minimal a transition as is reasonably possible. However, we recognize that changes to the wage index have the potential to create instability and significant negative impacts on certain providers even when labor market areas do not change. In addition, year-to-year fluctuations in an area's wage index can occur due to external factors beyond a provider's control, such as the COVID–19 PHE. For an individual provider, these fluctuations can be difficult to predict. So, we also recognize that predictability in Medicare payments is important to enable providers to budget and plan their operations.

In light of these considerations, we are proposing a permanent approach to smooth year-to-year changes in providers' wage indexes. We are proposing a policy that we believe increases the predictability of IRF PPS payments for providers, and mitigates instability and significant negative impacts to providers resulting from changes to the wage index.

As previously discussed, we believed applying a 5-percent cap on wage index decreases for FY 2021 provided greater transparency and was administratively less complex than prior transition methodologies. In addition, we believed this methodology mitigated short-term instability and fluctuations that can negatively impact providers due to wage index changes. Lastly, we believed the 5-percent cap applied to all wage index decreases for FY 2021 provided an

adequate safeguard against significant payment reductions related to the adoption of the revised CBSAs. However, as discussed earlier in this section of the proposed rule, we recognize there are circumstances that a 1-year mitigation policy, like the one adopted for FY 2021, would not effectively address future years in which providers continue to be negatively affected by significant wage index decreases.

Typical year-to-year variation in the IRF PPS wage index has historically been within 5 percent, and we expect this will continue to be the case in future years. Because providers are usually experienced with this level of wage index fluctuation, we believe applying a 5-percent cap on all wage index decreases each year, regardless of the reason for the decrease, would effectively mitigate instability in IRF PPS payments due to any significant wage index decreases that may affect providers in a year. We believe this approach would address concerns about instability that commenters raised in the FY 2022 IRF PPS rule. Additionally, we believe that applying a 5-percent cap on all wage index decreases would support increased predictability about IRF PPS payments for providers, enabling them to more effectively budget and plan their operations. Lastly, because applying a 5-percent cap on all wage index decreases would represent a small overall impact on the labor market area wage index system we believe it would ensure the wage index is a relative measure of the value of labor in prescribed labor market areas. As discussed in further detail in section XIII.C.2. of this proposed rule, we estimate that applying a 5-percent cap on all wage index decreases will have a very small effect on the wage index budget neutrality factor for FY 2023. Because the wage index is a measure of the value of labor (wage and wage-related costs) in a prescribed labor market area relative to the national average, we anticipate that in the absence of proposed policy changes most providers will not experience year-to-year wage index declines greater than 5 percent in any given year. We also believe that when the 5-percent cap would be applied under this proposal, it is likely that it would be applied similarly to all IRFs in the same labor market area, as the hospital average hourly wage data in the CBSA (and any relative decreases compared to the national average hourly wage) would be similar. While this policy may result in IRFs in a CBSA receiving a higher wage index than others in the same area (such

as situations when delineations change), we believe the impact would be temporary. Therefore, we anticipate that the impact to the wage index budget neutrality factor in future years would continue to be minimal.

The Secretary has broad authority to establish appropriate payment adjustments under the IRF PPS, including the wage index adjustment. As discussed earlier in this section, the IRF PPS regulations require us to use an appropriate wage index based on the best available data. For the reasons discussed in this section, we believe a 5-percent cap on wage index decreases would be appropriate for the IRF PPS. Therefore, for FY 2023 and subsequent years, we are proposing to apply a 5-percent cap on any decrease to a provider's wage index from its wage index in the prior year, regardless of the circumstances causing the decline. That is, we are proposing that an IRF's wage index for FY 2023 would not be less than 95 percent of its final wage index for FY 2022, regardless of whether the IRF is part of an updated CBSA, and that for subsequent years, a provider's wage index would not be less than 95 percent of its wage index calculated in the prior FY. This also means that if an IRF's prior FY wage index is calculated with the application of the 5-percent cap, the following year's wage index would not be less than 95 percent of the IRF's capped wage index in the prior FY. For example, if an IRF's wage index for FY 2023 is calculated with the application of the 5-percent cap, then its wage index for FY 2024 would not be less than 95 percent of its capped wage index in FY 2023. Lastly, we propose that a new IRF would be paid the wage index for the area in which it is geographically located for its first full or partial FY with no cap applied, because a new IRF would not have a wage index in the prior FY. As we have discussed in this proposed rule, we believe this proposed methodology would maintain the IRF PPS wage index as a relative measure of the value of labor in prescribed labor market areas, increase the predictability of IRF PPS payments for providers, and mitigate instability and significant negative impacts to providers resulting from significant changes to the wage index. In section XIII.C.2. of this proposed rule, we estimate the impact to payments for providers in FY 2023 based on this proposed policy. We also note that we would examine the effects of this policy on an ongoing basis in the future in order to assess its appropriateness.

Subject to the aforementioned proposal becoming final, we are also proposing to revise the regulation text at

§ 412.624(e)(1) to provide that starting October 1, 2022, CMS would apply a cap on decreases to the wage index such that the wage index applied is not less than 95 percent of the wage index applied to that IRF in the prior year.

We invite public comments on this proposal.

4. Proposed Wage Adjustment

To calculate the wage-adjusted facility payment for the proposed payment rates set forth in this proposed rule, we multiply the proposed unadjusted Federal payment rate for IRFs by the FY 2023 labor-related share based on the 2016-based IRF market basket relative importance (73.2 percent) to determine the labor-related portion of the standard payment amount. A full discussion of the calculation of the labor-related share is located in section V.C. of this proposed rule. We would then multiply the labor-related portion by the applicable IRF wage index. The wage index tables are available on the CMS website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/IRF-Rules-and-Related-Files.html>.

Adjustments or updates to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget-neutral manner. We propose to calculate a budget-neutral wage adjustment factor as established in the FY 2004 IRF PPS final rule (68 FR 45689) and codified at § 412.624(e)(1), as described in the steps below. We propose to use the listed steps to ensure that the FY 2023 IRF standard payment conversion factor reflects the proposed update to the wage indexes (based on the FY 2019 hospital cost report data) and the proposed update to the labor-related share, in a budget-neutral manner:

Step 1. Calculate the total amount of estimated IRF PPS payments using the labor-related share and the wage indexes from FY 2022 (as published in the FY 2022 IRF PPS final rule (86 FR 42362)).

Step 2. Calculate the total amount of estimated IRF PPS payments using the proposed FY 2023 wage index values (based on updated hospital wage data and taking into account the proposed permanent cap on wage index decreases policy) and the FY 2023 labor-related share of 73.2 percent.

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2. The resulting quotient is the proposed FY 2023 budget-neutral wage adjustment factor of 1.0007.

Step 4. Apply the budget neutrality factor from step 3 to the FY 2023 IRF PPS standard payment amount after the

application of the increase factor to determine the proposed FY 2023 standard payment conversion factor.

We discuss the calculation of the proposed standard payment conversion factor for FY 2023 in section V.E. of this proposed rule.

We invite public comments on the proposed IRF wage adjustment for FY 2023 (and the proposed permanent cap on wage index decreases policy).

E. Description of the Proposed IRF Standard Payment Conversion Factor and Payment Rates for FY 2023

To calculate the proposed standard payment conversion factor for FY 2023, as illustrated in Table 5, we begin by applying the proposed increase factor for FY 2023, as adjusted in accordance with sections 1886(j)(3)(C) of the Act, to the standard payment conversion factor for FY 2022 (\$17,240). Applying the proposed 2.8 percent increase factor for FY 2023 to the standard payment conversion factor for FY 2022 of \$17,240 yields a standard payment amount of

\$17,723. Then, we apply the proposed budget neutrality factor for the FY 2023 wage index (taking into account the proposed permanent cap on wage index decreases policy), and labor-related share of 1.0007, which results in a standard payment amount of \$17,735. We next apply the proposed budget neutrality factor for the CMG relative weights of 0.9979, which results in the standard payment conversion factor of \$17,698 for FY 2023.

We invite public comments on the proposed FY 2023 standard payment conversion factor.

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TABLE 5: Calculations to Determine the Proposed FY 2023 Standard Payment Conversion Factor

Explanation for Adjustment	Calculations
Standard Payment Conversion Factor for FY 2022	\$17,240
Proposed Market Basket Increase Factor for FY 2023 (3.2%), reduced by 0.4 percentage point for the productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act	x 1.028
Budget Neutrality Factor for the Updates to the Wage Index and Labor-Related Share	x 1.0007
Budget Neutrality Factor for the Revisions to the CMG Relative Weights	x 0.9979
Proposed FY 2023 Standard Payment Conversion Factor	= \$17,698

After the application of the proposed CMG relative weights described in section IV. of this proposed rule to the

proposed FY 2023 standard payment conversion factor (\$17,698), the resulting unadjusted IRF prospective

payment rates for FY 2023 are shown in Table 6.

TABLE 6: FY 2023 Payment Rates

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0101	\$ 17,565.27	\$ 15,307.00	\$ 13,923.02	\$ 13,197.40
0102	\$ 22,205.68	\$ 19,350.99	\$ 17,602.43	\$ 16,685.67
0103	\$ 28,842.43	\$ 25,134.70	\$ 22,862.28	\$ 21,672.97
0104	\$ 36,893.25	\$ 32,150.19	\$ 29,244.18	\$ 27,722.15
0105	\$ 44,450.30	\$ 38,735.61	\$ 35,233.18	\$ 33,399.67
0106	\$ 50,724.24	\$ 44,204.29	\$ 40,208.09	\$ 38,116.18
0201	\$ 19,800.52	\$ 15,956.52	\$ 14,466.35	\$ 13,581.45
0202	\$ 24,847.99	\$ 20,023.52	\$ 18,152.84	\$ 17,043.17
0203	\$ 30,488.34	\$ 24,568.36	\$ 22,272.93	\$ 20,911.96
0204	\$ 37,666.65	\$ 30,353.84	\$ 27,516.85	\$ 25,835.54
0205	\$ 47,726.20	\$ 38,459.52	\$ 34,866.83	\$ 32,734.22
0301	\$ 21,180.97	\$ 17,075.03	\$ 15,820.24	\$ 14,740.66
0302	\$ 27,283.24	\$ 21,993.30	\$ 20,375.71	\$ 18,986.41
0303	\$ 32,789.08	\$ 26,431.96	\$ 24,488.72	\$ 22,819.80
0304	\$ 38,151.58	\$ 30,755.58	\$ 28,493.78	\$ 26,550.54
0305	\$ 41,613.31	\$ 33,546.56	\$ 31,079.46	\$ 28,961.01
0401	\$ 23,628.60	\$ 19,402.32	\$ 18,540.42	\$ 17,011.32
0402	\$ 30,329.06	\$ 24,902.86	\$ 23,796.73	\$ 21,834.02
0403	\$ 37,567.54	\$ 30,847.61	\$ 29,477.79	\$ 27,046.08
0404	\$ 55,884.97	\$ 45,887.37	\$ 43,850.33	\$ 40,232.86
0405	\$ 46,407.70	\$ 38,105.56	\$ 36,413.64	\$ 33,410.28
0406	\$ 60,675.82	\$ 49,821.64	\$ 47,609.39	\$ 43,682.20
0407	\$ 76,228.83	\$ 62,592.52	\$ 59,812.16	\$ 54,877.96
0501	\$ 22,145.51	\$ 17,453.77	\$ 16,464.45	\$ 15,319.39
0502	\$ 27,438.98	\$ 21,625.19	\$ 20,400.48	\$ 18,981.11
0503	\$ 31,559.07	\$ 24,872.77	\$ 23,462.24	\$ 21,830.48
0504	\$ 38,215.29	\$ 30,120.23	\$ 28,412.37	\$ 26,435.50
0505	\$ 52,478.11	\$ 41,360.23	\$ 39,017.01	\$ 36,302.14
0601	\$ 23,833.90	\$ 17,813.04	\$ 16,894.51	\$ 15,068.08
0602	\$ 29,707.86	\$ 22,203.91	\$ 21,058.85	\$ 18,782.89
0603	\$ 35,445.55	\$ 26,490.37	\$ 25,124.08	\$ 22,409.21
0604	\$ 43,931.75	\$ 32,833.33	\$ 31,141.40	\$ 27,775.24
0701	\$ 21,964.99	\$ 17,020.17	\$ 16,244.99	\$ 15,053.92
0702	\$ 27,074.40	\$ 20,977.44	\$ 20,021.75	\$ 18,554.58
0703	\$ 33,709.38	\$ 26,120.48	\$ 24,929.40	\$ 23,102.97
0704	\$ 40,558.51	\$ 31,426.34	\$ 29,994.57	\$ 27,796.48
0801	\$ 19,954.50	\$ 17,013.09	\$ 15,379.56	\$ 14,076.99
0802	\$ 22,961.39	\$ 19,575.76	\$ 17,698.00	\$ 16,198.98
0803	\$ 25,416.10	\$ 21,669.43	\$ 19,589.92	\$ 17,929.84
0804	\$ 29,141.53	\$ 24,844.45	\$ 22,460.53	\$ 20,558.00
0805	\$ 34,817.28	\$ 29,683.09	\$ 26,835.48	\$ 24,561.28
0901	\$ 21,338.48	\$ 17,053.79	\$ 15,829.09	\$ 14,593.77
0902	\$ 26,931.05	\$ 21,524.31	\$ 19,977.50	\$ 18,420.08
0903	\$ 32,024.53	\$ 25,594.85	\$ 23,756.03	\$ 21,903.04
0904	\$ 37,378.18	\$ 29,872.45	\$ 27,727.46	\$ 25,564.76
1001	\$ 21,678.28	\$ 18,765.19	\$ 16,345.87	\$ 14,999.06
1002	\$ 26,862.02	\$ 23,253.40	\$ 20,253.59	\$ 18,586.44
1003	\$ 31,835.16	\$ 27,557.56	\$ 24,003.80	\$ 22,026.93
1004	\$ 39,905.45	\$ 34,544.73	\$ 30,088.37	\$ 27,610.65
1101	\$ 24,164.85	\$ 24,164.85	\$ 17,802.42	\$ 14,115.92
1102	\$ 29,695.47	\$ 29,695.47	\$ 21,876.50	\$ 17,345.81
1103	\$ 38,815.25	\$ 38,815.25	\$ 28,596.43	\$ 22,674.68
1201	\$ 23,320.65	\$ 18,432.47	\$ 16,531.70	\$ 14,744.20
1202	\$ 30,355.61	\$ 23,993.18	\$ 21,517.23	\$ 19,193.48
1203	\$ 37,519.76	\$ 29,658.31	\$ 26,596.55	\$ 23,724.17
1204	\$ 39,346.19	\$ 31,100.70	\$ 27,890.28	\$ 24,878.08

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
1301	\$ 21,570.32	\$ 16,195.44	\$ 15,379.56	\$ 15,177.80
1302	\$ 28,645.98	\$ 21,508.38	\$ 20,425.26	\$ 20,156.25
1303	\$ 33,537.71	\$ 25,178.94	\$ 23,911.77	\$ 23,596.74
1304	\$ 41,323.06	\$ 31,024.59	\$ 29,461.86	\$ 29,076.04
1305	\$ 37,029.53	\$ 27,801.79	\$ 26,401.88	\$ 26,055.00
1401	\$ 20,159.79	\$ 15,937.05	\$ 14,691.11	\$ 13,436.32
1402	\$ 25,679.80	\$ 20,301.38	\$ 18,713.87	\$ 17,115.74
1403	\$ 31,107.77	\$ 24,593.14	\$ 22,667.60	\$ 20,733.21
1404	\$ 38,125.03	\$ 30,139.69	\$ 27,782.32	\$ 25,410.79
1501	\$ 23,095.89	\$ 18,078.51	\$ 17,275.02	\$ 16,705.14
1502	\$ 28,196.45	\$ 22,071.18	\$ 21,090.71	\$ 20,393.41
1503	\$ 32,973.14	\$ 25,810.76	\$ 24,663.93	\$ 23,849.82
1504	\$ 39,309.03	\$ 30,771.51	\$ 29,403.46	\$ 28,431.84
1601	\$ 20,076.61	\$ 15,641.49	\$ 15,179.57	\$ 13,953.10
1602	\$ 23,648.07	\$ 18,421.85	\$ 17,878.52	\$ 16,434.36
1603	\$ 28,704.39	\$ 22,361.42	\$ 21,703.06	\$ 19,947.42
1604	\$ 34,960.63	\$ 27,235.45	\$ 26,431.96	\$ 24,295.81
1701	\$ 23,019.79	\$ 18,200.62	\$ 17,096.27	\$ 15,547.69
1702	\$ 28,566.34	\$ 22,586.19	\$ 21,216.36	\$ 19,294.36
1703	\$ 33,718.23	\$ 26,658.50	\$ 25,042.67	\$ 22,773.79
1704	\$ 38,293.16	\$ 30,275.97	\$ 28,438.92	\$ 25,863.86
1705	\$ 43,726.45	\$ 34,571.27	\$ 32,474.06	\$ 29,532.65
1801	\$ 21,435.82	\$ 16,928.14	\$ 15,763.61	\$ 14,611.47
1802	\$ 25,791.30	\$ 20,368.63	\$ 18,966.95	\$ 17,581.19
1803	\$ 32,550.16	\$ 25,706.35	\$ 23,938.31	\$ 22,187.98
1804	\$ 37,668.42	\$ 29,748.57	\$ 27,702.68	\$ 25,678.03
1805	\$ 44,995.40	\$ 35,534.04	\$ 33,089.95	\$ 30,672.40
1806	\$ 61,380.20	\$ 48,473.05	\$ 45,138.75	\$ 41,839.84
1901	\$ 20,457.12	\$ 18,315.66	\$ 17,605.97	\$ 16,473.30
1902	\$ 25,685.11	\$ 22,996.78	\$ 22,104.80	\$ 20,681.88
1903	\$ 37,629.49	\$ 33,689.91	\$ 32,383.80	\$ 30,298.98
1904	\$ 58,067.14	\$ 51,987.88	\$ 49,973.84	\$ 46,756.35
2001	\$ 21,258.84	\$ 17,156.44	\$ 15,790.16	\$ 14,367.24
2002	\$ 26,325.78	\$ 21,246.45	\$ 19,554.52	\$ 17,791.80
2003	\$ 31,279.45	\$ 25,244.43	\$ 23,233.93	\$ 21,138.49
2004	\$ 36,827.77	\$ 29,722.02	\$ 27,355.80	\$ 24,888.70
2005	\$ 39,450.61	\$ 31,838.70	\$ 29,304.35	\$ 26,660.27
2101	\$ 28,300.87	\$ 20,267.75	\$ 19,961.57	\$ 18,650.15
2102	\$ 43,694.59	\$ 31,293.60	\$ 30,821.07	\$ 28,794.65
5001	\$ -	\$ -	\$ -	\$ 3,008.66
5101	\$ -	\$ -	\$ -	\$ 13,071.74
5102	\$ -	\$ -	\$ -	\$ 33,394.36
5103	\$ -	\$ -	\$ -	\$ 15,827.32
5104	\$ -	\$ -	\$ -	\$ 40,231.09

F. Example of the Methodology for Adjusting the Proposed Prospective Payment Rates

Table 7 illustrates the methodology for adjusting the proposed prospective payments (as described in section V. of this proposed rule). The following examples are based on two hypothetical Medicare beneficiaries, both classified into CMG 0104 (without comorbidities). The proposed unadjusted prospective

payment rate for CMG 0104 (without comorbidities) appears in Table 7.

Example: One beneficiary is in Facility A, an IRF located in rural Spencer County, Indiana, and another beneficiary is in Facility B, an IRF located in urban Harrison County, Indiana. Facility A, a rural non-teaching hospital has a Disproportionate Share Hospital (DSH) percentage of 5 percent (which would result in a LIP adjustment of 1.0156), a wage index of 0.8384, and

a rural adjustment of 14.9 percent. Facility B, an urban teaching hospital, has a DSH percentage of 15 percent (which would result in a LIP adjustment of 1.0454 percent), a wage index of 0.8763, and a teaching status adjustment of 0.0784.

To calculate each IRF's labor and non-labor portion of the proposed prospective payment, we begin by taking the unadjusted prospective payment rate for CMG 0104 (without

comorbidities) from Table 7. Then, we multiply the proposed labor-related share for FY 2023 (73.2 percent) described in section V.C. of this proposed rule by the proposed unadjusted prospective payment rate. To determine the non-labor portion of the proposed prospective payment rate, we subtract the labor portion of the Federal payment from the proposed unadjusted prospective payment.

To compute the proposed wage-adjusted prospective payment, we multiply the labor portion of the proposed Federal payment by the appropriate wage index located in the

applicable wage index table. This table is available on the CMS website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/IRF-Rules-and-Related-Files.html>.

The resulting figure is the wage-adjusted labor amount. Next, we compute the proposed wage-adjusted Federal payment by adding the wage-adjusted labor amount to the non-labor portion of the proposed Federal payment.

Adjusting the proposed wage-adjusted Federal payment by the facility-level adjustments involves several steps.

First, we take the wage-adjusted prospective payment and multiply it by the appropriate rural and LIP adjustments (if applicable). Second, to determine the appropriate amount of additional payment for the teaching status adjustment (if applicable), we multiply the teaching status adjustment (0.0784, in this example) by the wage-adjusted and rural-adjusted amount (if applicable). Finally, we add the additional teaching status payments (if applicable) to the wage, rural, and LIP-adjusted prospective payment rates. Table 7 illustrates the components of the adjusted payment calculation.

TABLE 7: Example of Computing the FY 2023 IRF Prospective Payment

Steps		Rural Facility A (Spencer Co., IN)	Urban Facility B (Harrison Co., IN)
1	Unadjusted Payment		\$27,722.15
2	Labor Share	X	0.732
3	Labor Portion of Payment	=	\$20,292.61
4	CBSA-Based Wage Index \	X	0.8384
5	Wage-Adjusted Amount	=	\$17,013.33
6	Non-Labor Amount	+	\$7,429.54
7	Wage-Adjusted Payment	=	\$24,442.86
8	Rural Adjustment	X	1.149
9	Wage- and Rural-Adjusted Payment	=	\$28,084.85
10	LIP Adjustment	X	1.0156
11	Wage-, Rural- and LIP-Adjusted Payment	=	\$28,522.97
12	Wage- and Rural-Adjusted Payment		\$28,084.85
13	Teaching Status Adjustment	X	0
14	Teaching Status Adjustment Amount	=	\$0.00
15	Wage-, Rural-, and LIP-Adjusted Payment	+	\$28,522.97
16	Total Adjusted Payment	=	\$28,522.97

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Thus, the proposed adjusted payment for Facility A would be \$28,522.97, and the adjusted payment for Facility B would be \$28,333.19.

VI. Proposed Update to Payments for High-Cost Outliers Under the IRF PPS for FY 2023

A. Proposed Update to the Outlier Threshold Amount for FY 2023

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. A case qualifies for an outlier payment if the estimated cost of the case exceeds the adjusted outlier threshold. We calculate the adjusted outlier threshold by adding the IRF PPS payment for the case (that is, the CMG payment adjusted by all of the relevant facility-level adjustments) and the adjusted threshold amount (also adjusted by all of the relevant facility-level adjustments).

Then, we calculate the estimated cost of a case by multiplying the IRF's overall CCR by the Medicare allowable covered charge. If the estimated cost of the case is higher than the adjusted outlier threshold, we make an outlier payment for the case equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold.

In the FY 2002 IRF PPS final rule (66 FR 41362 through 41363), we discussed our rationale for setting the outlier threshold amount for the IRF PPS so that estimated outlier payments would equal 3 percent of total estimated payments. For the FY 2002 IRF PPS final rule, we analyzed various outlier policies using 3, 4, and 5 percent of the total estimated payments, and we concluded that an outlier policy set at 3 percent of total estimated payments would optimize the extent to which we could reduce the financial risk to IRFs of caring for high-cost patients, while still providing for adequate payments

for all other (non-high cost outlier) cases.

Subsequently, we updated the IRF outlier threshold amount in the FYs 2006 through 2022 IRF PPS final rules and the FY 2011 and FY 2013 notices (70 FR 47880, 71 FR 48354, 72 FR 44284, 73 FR 46370, 74 FR 39762, 75 FR 42836, 76 FR 47836, 76 FR 59256, 77 FR 44618, 78 FR 47860, 79 FR 45872, 80 FR 47036, 81 FR 52056, 82 FR 36238, 83 FR 38514, 84 FR 39054, 85 FR 48444, and 86 FR 42362, respectively) to maintain estimated outlier payments at 3 percent of total estimated payments. We also stated in the FY 2009 final rule (73 FR 46370 at 46385) that we would continue to analyze the estimated outlier payments for subsequent years and adjust the outlier threshold amount as appropriate to maintain the 3 percent target.

To update the IRF outlier threshold amount for FY 2023, we propose to use FY 2021 claims data and the same methodology that we used to set the

initial outlier threshold amount in the FY 2002 IRF PPS final rule (66 FR 41362 through 41363), which is also the same methodology that we used to update the outlier threshold amounts for FYs 2006 through 2022. The outlier threshold is calculated by simulating aggregate payments and using an iterative process to determine a threshold that results in outlier payments being equal to 3 percent of total payments under the simulation. To determine the outlier threshold for FY 2023, we estimated the amount of FY 2023 IRF PPS aggregate and outlier payments using the most recent claims available (FY 2021) and the proposed FY 2023 standard payment conversion factor, labor-related share, and wage indexes, incorporating any applicable budget-neutrality adjustment factors. The outlier threshold is adjusted either up or down in this simulation until the estimated outlier payments equal 3 percent of the estimated aggregate payments. Based on an analysis of the preliminary data used for the proposed rule, we estimate that IRF outlier payments as a percentage of total estimated payments would be approximately 3.8 percent in FY 2022. Therefore, we propose to update the outlier threshold amount from \$9,491 for FY 2022 to \$13,038 for FY 2023 to maintain estimated outlier payments at approximately 3 percent of total estimated aggregate IRF payments for FY 2023.

Although we believe that updating the outlier threshold for FY 2023 would be appropriate to maintain IRF PPS outlier payments at 3 percent of total estimated payments, we recognize that the proposed outlier threshold amount for FY 2023 would result in a significant increase from the current outlier threshold amount for FY 2022. As we continue to explore the underlying reasons for the large change in the proposed outlier threshold amount, we welcome comments from stakeholders on any observations or information related to the increase in the proposed update to outlier threshold amount for FY 2023.

B. Proposed Update to the IRF Cost-to-Charge Ratio Ceiling and Urban/Rural Averages for FY 2023

CCRs are used to adjust charges from Medicare claims to costs and are computed annually from facility-specific data obtained from MCRs. IRF specific CCRs are used in the development of the CMG relative weights and the calculation of outlier payments under the IRF PPS. In accordance with the methodology stated in the FY 2004 IRF PPS final rule (68 FR45692 through 45694), we propose to

apply a ceiling to IRFs' CCRs. Using the methodology described in that final rule, we propose to update the national urban and rural CCRs for IRFs, as well as the national CCR ceiling for FY 2023, based on analysis of the most recent data available. We apply the national urban and rural CCRs in the following situations:

- New IRFs that have not yet submitted their first MCR.
- IRFs whose overall CCR is in excess of the national CCR ceiling for FY 2023, as discussed below in this section.
- Other IRFs for which accurate data to calculate an overall CCR are not available.

Specifically, for FY 2023, we propose to estimate a national average CCR of 0.463 for rural IRFs, which we calculated by taking an average of the CCRs for all rural IRFs using their most recently submitted cost report data. Similarly, we propose to estimate a national average CCR of 0.393 for urban IRFs, which we calculated by taking an average of the CCRs for all urban IRFs using their most recently submitted cost report data. We apply weights to both of these averages using the IRFs' estimated costs, meaning that the CCRs of IRFs with higher total costs factor more heavily into the averages than the CCRs of IRFs with lower total costs. For this proposed rule, we have used the most recent available cost report data (FY 2020). This includes all IRFs whose cost reporting periods begin on or after October 1, 2019, and before October 1, 2020. If, for any IRF, the FY 2020 cost report was missing or had an "as submitted" status, we used data from a previous FY's (that is, FY 2004 through FY 2019) settled cost report for that IRF. We do not use cost report data from before FY 2004 for any IRF because changes in IRF utilization since FY 2004 resulting from the 60 percent rule and IRF medical review activities suggest that these older data do not adequately reflect the current cost of care. Using updated FY 2020 cost report data for this proposed rule, we estimate a national average CCR of 0.463 for rural IRFs, and a national average CCR of 0.393 for urban IRFs.

In accordance with past practice, we propose to set the national CCR ceiling at 3 standard deviations above the mean CCR. Using this method, we propose a national CCR ceiling of 1.40 for FY 2023. This means that, if an individual IRF's CCR were to exceed this ceiling of 1.40 for FY 2023, we will replace the IRF's CCR with the appropriate proposed national average CCR (either rural or urban, depending on the geographic location of the IRF). We

calculated the proposed national CCR ceiling by:

Step 1. Taking the national average CCR (weighted by each IRF's total costs, as previously discussed) of all IRFs for which we have sufficient cost report data (both rural and urban IRFs combined).

Step 2. Estimating the standard deviation of the national average CCR computed in step 1.

Step 3. Multiplying the standard deviation of the national average CCR computed in step 2 by a factor of 3 to compute a statistically significant reliable ceiling.

Step 4. Adding the result from step 3 to the national average CCR of all IRFs for which we have sufficient cost report data, from step 1.

We are also proposing that if more recent data become available after the publication of this proposed rule and before the publication of the final rule, we would use such data to determine the FY 2023 national average rural and urban CCRs and the national CCR ceiling in the final rule. We invite public comment on the proposed update to the IRF CCR ceiling and the urban/rural averages for FY 2023.

VII. Proposed Codification and Clarifications of IRF Teaching Status Adjustment Policy

In the FY 2006 IRF PPS final rule (70 FR 47928 through 47932), we implemented § 412.624(e)(4) to establish a facility level adjustment for IRFs that are, teaching hospitals or units of teaching hospitals. The teaching status adjustment accounts for the higher indirect operating costs experienced by IRFs that participate in training residents in graduate medical education (GME) programs. The teaching status payment adjustment is based on the ratio of the number of full-time equivalent (FTE) interns and residents training in the IRF divided by the IRF's average daily census. Section 1886(j)(3)(A)(v) of the Act requires the Secretary to adjust the prospective payment rates for the IRF PPS by such factors as the Secretary determines are necessary to properly reflect the variations in necessary costs of treatment among rehabilitation facilities.

We established the IRF teaching status adjustment in a manner that limited the incentives for IRFs to add FTE interns and residents for the purpose of increasing their teaching status adjustment, as has been done in the payment systems for Inpatient Psychiatric Facilities (IPF) and acute care hospitals. That is, we imposed a cap on the number of FTE interns and

residents that the IRF can count for the purpose of calculating the teaching status adjustment. This cap is similar to the cap established by the Balanced Budget Act of 1997 (Pub. L. 105–33, enacted August 5, 1997) section 4621, that added section 1886(d)(5)(B)(v) of the Act (indirect medical education (IME) FTE cap for IPPS hospitals). The cap limits the number of FTE interns and residents that teaching IRFs may count for the purpose of calculating the IRF PPS teaching status adjustment, not the number of interns and residents that teaching institutions care hire or train. The cap is equal to the number of FTE interns and residents that trained in the IRF during a “base year,” that is based on the most recent final settled cost report for a cost reporting period ending on or before November 15, 2004. A complete discussion of how the IRF teaching status adjustment was calculated appears in the FY 2006 IRF PPS final rule (70 FR 47928 through 47932).

In the FY 2012 IRF PPS final rule (76 FR 47846 through 47848) published on August 5, 2011, we updated the IRF PPS teaching status adjustment policy in order to maintain consistency, to the extent feasible, with the indirect medical education (IME) teaching policies that were finalized in the IPPS FY 1999 final rule (64 FR 41522), the IPPS FY 2001 final rule (66 FR 39900), and the IPF PPS teaching adjustment policies finalized in the 2012 IPF PPS final rule (76 FR 26454 through 26456). In that final rule, we adopted a policy which permits a temporary increase in the FTE intern and resident cap when an IRF increases the number of FTE residents it trains, in order to accept displaced residents because another IRF closes or closes a medical residency training program. We refer to a “displaced” resident or intern as one that is training in an IRF and is unable to complete training in that IRF, either because the IRF closes or closes a medical residency training program.

The cap adjustment for IRFs, adopted in the FY 2012 IRF PPS final rule, is considered temporary because it is resident-specific and will only apply to the residents until they have completed their training in the program in which they were training at the time of the IRF closure or the closure of the program. Similar to the IPPS and IPF policy for displaced residents, the IRF PPS temporary cap adjustment only applies to residents that were still training at the IRF at the time the IRF closed or at the time the IRF ceased training residents in the residency training program(s). Residents who leave the IRF, for whatever reason, before the closure of

the IRF or the closure of the medical residency training program are not considered displaced residents for purposes of the IRF temporary cap adjustment policy.

In the FY 2012 IRF PPS final rule, we also adopted the IPPS definition of “closure of a hospital” at § 413.79(h)(1)(i) to mean the IRF terminates its Medicare provider agreement as specified in § 489.52. In this instance, we allow a temporary adjustment to an IRF’s FTE cap to reflect residents added to their medical residency training program because of an IRF’s closure. We allow an adjustment to an IRF’s FTE cap if the IRF meets the criteria outlined in the FY 2012 IRF PPS final rule (76 FR 47847). After the displaced residents leave the accepting IRF’s training program or complete their medical residency training program, the accepting IRF’s cap will revert to its original level. As such, the temporary adjustment to the FTE cap will be available to the IRF only for the period of time necessary for the displaced residents to complete their training.

Additionally, in the FY 2012 IRF PPS final rule, we adopted the IPPS definition of “closure of a hospital residency training program,” as specified in § 413.79(h)(1)(ii), which means that the hospital ceases to offer training for interns and residents in a particular approved medical residency training program. In this instance, if an IRF ceases training residents in a medical residency training program(s) and agrees to temporarily reduce its FTE cap, another IRF may receive a temporary adjustment to its FTE cap to reflect the addition of the displaced residents. For more discussion regarding the methodology for adjusting the caps for the “receiving IRF” and the “IRF that closed its program,” refer to the FY 2012 IRF PPS final rule (76 FR 47847).

A. Proposed Codification of Existing Teaching Status Adjustment Policies

In an effort to streamline the IRF PPS teaching status adjustment policies that were finalized in the FY 2006 IRF PPS final rule (70 FR 47928 through 47932) and the FY 2012 IRF PPS final rule (76 FR 47846 through 47848), we are proposing to codify the longstanding policy so that these policies can be easily located by IRF providers and can also align, to the extent feasible, with the IPPS IME and IPF teaching adjustment policy regulations.

First, we are proposing to codify policy that was finalized in the FY 2006 IRF PPS final rule with respect to how CMS adjusts the Federal prospective payment on a facility basis by a factor

to account for indirect teaching costs. When the teaching status adjustment policy was finalized in the FY 2006 IRF PPS final rule (70 FR 47928 through 47932), the definition of this “factor” and explanations of how it is computed were not included in the regulations. Rather, the more detailed definition and the explanation of the teaching status payment adjustment provided in the FY 2006 IRF PPS final rule, were published in the Medicare Claims Processing Manual (100–04, chapter 3, 140.2.5.4). Currently, § 412.624(e)(4) states, for discharges on or after October 1, 2005, CMS adjusts the Federal prospective payment on a facility basis by a factor as specified by CMS for facilities that are teaching institutions or units of teaching institutions. This adjustment is made on a claim basis as an interim payment and the final payment in full for the claim is made during the final settlement of the cost report.

Second, we are also proposing to codify the IRF policy that was adopted in the FY 2012 IRF PPS final rule (76 FR 47846 through 47848) allowing an IRF to receive a temporary adjustment to its FTE cap to reflect residents added to its teaching program because of another IRF’s closure or an IRF’s medical residency training program closure. We believe that codifying these longstanding policies would improve clarity and reduce administrative burden on IRF providers and others trying to locate all relevant information pertaining to the teaching hospital adjustment.

Thus, we are proposing to codify CMS’ existing IRF PPS’ teaching hospital adjustment policies through proposed amendments to §§ 412.602 and 412.624(e)(4) presented in this proposed rule; except as specifically noted in this proposed rule, our intent is to codify the existing IRF PPS teaching status adjustment policy.

We invite public comment on our proposal to amend §§ 412.602 and 412.624(e)(4) to codify our longstanding policies regarding the teaching status adjustment.

B. Proposed Update to the IRF Teaching Policy on IRF Program Closures and Displaced Residents

For FY 2023, we are also proposing to change the IRF policy pertaining to displaced residents resulting from IRF closures and closures of IRF residency teaching programs. Specifically, we are proposing to adopt conforming changes to the IRF PPS teaching status adjustment policy to align with the policy changes that the IPPS finalized in the FY 2021 IPPS final rule (85 FR 58865 through 58870) and that the IPF

finalized in the FY 2022 IPF PPS final rule (86 FR 42618 through 42621). We believe that the IRF teaching status adjustment policy relating to hospital closure and displaced residents is susceptible to the same vulnerabilities as IPPS IME policy. Hence, if an IRF with residents training in its residency program announces it is closing, these residents will become displaced and will need to find alternative positions at other IRFs or risk being unable to become board-certified.

We are proposing to implement the policy discussed in this section to remain consistent with the IPPS policy for calculating the temporary IME resident cap adjustment in situations where the receiving hospital assumes the training of displaced residents due to another hospital or residency program's closure. We are also proposing that, in the future, we would deviate from the IPPS IME policy as it pertains to counting displaced residents for the purposes of the IRF teaching status adjustment only when it is necessary and appropriate for the IRF PPS.

The policy adopted in the FY 2012 IRF PPS final rule (76 FR 47846 through 47848), published August 5, 2011, permits an IRF to temporarily adjust its FTE cap to reflect displaced residents added to their residency program because of another IRF closure or IRF residency program closure. In that final rule, we adopted the IPPS definition of "closure of a hospital" at § 413.79(h)(1)(i) to also apply to IRF, and to mean that the IRF terminates its Medicare provider agreement as specified in § 489.52. We also adopted the IPPS definition of "closure of a hospital residency training program" as it is currently defined at § 413.79(h)(1)(ii) to also apply to IRF residency training program closures, and to mean that the IRF ceases to offer training for residents in a particular approved medical residency training program. In this proposed rule, we are proposing to codify both of these definitions within the IRF PPS definitions section provided at § 412.602 so that the IRF teaching policies are more centrally located and more easily accessible.

Although not explicitly stated in the regulations, our current policy is that a displaced resident is one that is physically present at the hospital training on the day prior to or the day of hospital or residency program closure. This longstanding policy derived from the fact that there are requirements that the receiving IRF identifies the residents "who have come from the closed IRF" or identifies the

residents "who have come from another IRF's closed residency program," and that the IRF that closed its program identifies "the residents who were in training at the time of the residency program's closure." We considered the residents who were physically present at the IRF to be those residents who were "training at the time of the program's closure," thereby granting them the status of "displaced residents." Although we did not want to limit the "displaced residents" to only those physically present at the time of closure, it becomes much more administratively challenging for the following groups of residents at closing IRFs/residency programs to continue their training:

(1) Residents who leave the program after the closure is publicly announced to continue training at another IRF, but before the actual closure;

(2) Residents assigned to and training at planned rotations at other IRFs who will be unable to return to their rotations at the closing IPF or program; and

(3) Individuals (such as medical students or would-be fellows) who matched into resident programs at the closing IRF or residency program, but have not yet started training at the closing IRF or residency program.

Other groups of residents who, under current policy, are already considered "displaced residents" include—

(1) Residents who are physically training in the IRF on the day prior to or day of residency program or IRF closure; and

(2) Residents who would have been at the closing IRF or IRF residency program on the day prior to or day of closure, but were on approved leave at that time, and are unable to return to their training at the closing IRF or IRF residency training program.

We are proposing to amend our IRF policy with regard to closing teaching IRFs and closing IRF medical residency training programs to address the needs of interns and residents attempting to find alternative IRFs in which to complete their training. Additionally, this proposal addresses the incentives of originating and receiving IRFs with regard to ensuring we appropriately account for their indirect teaching costs by way of an appropriate IRF teaching adjustment based on each program's FTE resident count. We are proposing to make changes to the current IRF teaching status adjustment policy related to displaced residents as discussed below.

First, rather than link the status of displaced residents for the purpose of the receiving IRF's request to increase

their FTE cap to the resident's presence at the closing IRF or program on the day prior to or the day of the residency program or IRF closure, we are proposing to link the status of the displaced residents to the day that the closure was publicly announced (for example, via a press release or a formal notice to the Accreditation Council on Graduate Medical Education). This would provide great flexibility for the interns and residents to transfer while the IRF operations or teaching programs are winding down, rather than waiting until the last day of IRF or IRF teaching program operation. This would address the needs of the group of residents who would leave the program after the closure was publicly announced to continue training at another hospital, but before the day of actual closure.

Second, by removing the link between the status of displaced residents and their presence at the closing IRF or residency program on the day prior to or the day of the IRF closure or program closure, we propose to also allow the residents assigned to and training at planned rotations at other IRFs who will be unable to return to their rotations at the closing IRF or program and individuals (such as medical students or would-be fellows) who matched into resident programs at the closing IRF or residency program, but have not yet started training at the closing IRF or residency program, to be considered a displaced resident.

Thus, we are proposing to revise our teaching policy with regard to which residents can be considered "displaced" for the purpose of the receiving IRF's request to increase their IRF cap in the situation where an IRF announces publicly that it is closing, and/or that it is closing an IRF residency program. Specifically, we are proposing to adopt the FY 2021 IPPS final rule definition of "displaced resident" as defined at § 413.79(h)(1)(ii), for the purpose of calculating the IRF's teaching status adjustment.

In addition, we are proposing to change another detail of the policy specific to the requirements for the receiving IRF. To apply for the temporary increase in the FTE resident cap, the receiving IRF would have to submit a letter to its Medicare Administrative Contractor (MAC) within 60 days after beginning to train the displaced interns and residents. As established in the FY 2012 IRF PPS final rule, this letter must identify the residents who have come from the closed IRF or closed residency program and caused the receiving IRF to exceed its cap, and must specify the length of time that the adjustment is needed.

Furthermore, to maintain consistency with the IPPS IME policy, we are proposing that the letter must also include:

- (1) The name of each displaced resident;
- (2) The last four digits of each displaced resident's social security number; this will reduce the amount of personally identifiable information (PII);
- (3) The name of the IRF and the name of the residency program or programs in which each resident was training at previously; and
- (4) The amount of the cap increase needed for each resident (based on how much the receiving IRF is in excess of its cap and the length of time for which the adjustments are needed).

As we previously discussed in the FY 2012 IRF PPS final rule (76 FR 47846 through 47848), we are also clarifying that the maximum number of FTE resident cap slots that could be transferred to all receiving IRFs is the number of FTE resident cap slots belonging to the IRF that has closed the resident training program, or that is closing. Therefore, if the originating IRF is training residents in excess of its cap, then being a displaced resident does not guarantee that a cap slot will be transferred along with the resident. Therefore, we are proposing that if there are more IRF displaced residents than available cap slots, the slots may be apportioned according to the closing IRF's discretion. The decision to transfer a cap slot if one is available would be voluntary and made at the sole discretion of the originating IRF. However, if the originating IRF decides to do so, then it would be the originating IRF's responsibility to determine how much of an available cap slot would go with a particular resident (if any). We also note that, as we previously discussed in the FY 2012 IRF PPS final rule (76 FR 47846 through 47848), only to the extent a receiving IRF would exceed its FTE cap by training displaced residents would it be

eligible for a temporary adjustment to its resident FTE cap. As such, displaced residents are factored into the receiving IRF's ratio of resident FTEs to the facility's average daily census.

We invite public comment on the proposed updates to the IRF teaching policy.

VIII. Solicitation of Comments Regarding the Facility-Level Adjustment Factor Methodology

Section 1886(j)(3)(A)(v) of the Act confers broad authority upon the Secretary to adjust the per unit payment rate "by such . . . factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities." Under this authority, we currently adjust the prospective payment amount associated with a CMG to account for facility-level characteristics such as a facility's percentage of low-income patients (LIP), teaching status, and location in a rural area, if applicable, as described in § 412.624(e).

The facility-level adjustment factors are intended to account for differences in costs attributable to the different types of IRF providers and to better align payments with the costs of providing IRF care. The LIP and rural facility-level adjustment factors have been utilized since the inception of the IRF PPS, while the teaching status adjustment factor was finalized in the FY 2006 IRF PPS final rule (70 FR 47880) when our regression analysis indicated that it had become statistically significant in predicting IRF costs. Each of the facility-level adjustment factors were implemented using the same statistical approach, that is, utilizing coefficients determined from regression analysis.

Historically, we have observed relatively large fluctuations in these factors from year-to-year which lead us to explore a number of options to provide greater stability and

predictability between years and increase the accuracy of Medicare payments for IRFs. In addition to holding these factors constant over multiple years to mitigate fluctuations in payments, we also implemented a number of refinements to the methodology used to calculate the adjustment factors in efforts to better align payments with the costs of care. For example, in FY 2010 (74 FR 39762) we implemented a 3-year moving average approach to updating the facility-level adjustment factors to promote more consistency in the adjustment factors over time. Additionally, in FY 2014 (78 FR 47859) we added an indicator variable for a facility's freestanding or hospital-based status to the payment regression to improve the accuracy of the IRF payment adjustments. This variable was added to control for differences in cost structure between hospital-based and freestanding IRFs in the regression analysis, so that these differences would not inappropriately influence the adjustment factor estimates. We refer readers to the FY 2015 IRF PPS final rule (79 FR 45882 through 45883) for a full discussion of the refinements that have been made to the methodology used to determine the facility-level adjustment factors and other analysis that has been considered over time. Due to the revisions to the regression analysis and the substantive changes to the facility-level adjustment factors that were adopted in the FY 2014 IRF PPS final rule, we finalized a proposal in the FY 2015 IRF PPS final rule (79 FR 45871) to freeze the facility-level adjustment factors for FY 2015 and all subsequent years at the FY 2014 levels while we continued to monitor changes in the adjustment factors over time. Table 8 shows how the IRF facility-level adjustment factors have changed over time since the start of the IRF PPS:

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TABLE 8: Historic IRF Facility-level Adjustment Factors

	FY 2002-2005	FY 2006-2009	FY 2010-2013	FY 2014-Current
LIP	0.4838	0.6229	0.4613	0.3177
Teaching	N/A	0.9012	0.6876	1.0163
Rural	0.191	0.213	0.184	0.149

We have continued monitoring the adjustment factors using the same methodology described in the FY 2014 IRF PPS final rule (78 FR 47869). That

is, we have continued to calculate the facility-level adjustment factors using the following the steps:

(Steps 1 and 2 are performed independently for each of three years of IRF claims data)

Step 1. Calculate the average cost per case for each IRF in the available IRF claims data.

Step 2. Perform a logarithmic regression analysis on the average cost per case to compute the coefficients for the rural, LIP, and teaching status adjustments. This regression analysis incorporates an indicator variable to account for whether a facility is a freestanding IRF hospital or a unit of an acute care hospital (or a CAH).

Step 3. Calculate a mean for each of the coefficients across the 3 years of data (using logarithms for the LIP and teaching status adjustment coefficients (because they are continuous variables), but not for the rural adjustment coefficient (because the rural variable is either zero (if not rural) or 1 (if rural))). To compute the LIP and teaching status adjustment factors, we convert these factors back out of the logarithmic form. Additional information on the regression analysis used to calculate the

facility-level adjustment factors can be found on the CMS website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Research>. We have continued to monitor changes in the facility-level adjustment factors for each FY since they were frozen in FY 2015 at the FY 2014 levels. Table 9, contains the rural, LIP, and teaching status adjustment factors for each FY since they were frozen at their 2014 levels.

TABLE 9: IRF Facility Level Adjustment Factor Changes

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
LIP	0.3177	0.3809	0.4363	0.3880	0.4377	0.4572	0.4367	0.4382	0.4165	0.5092
Teaching	1.0163	1.9791	3.1820	3.0946	2.2472	2.1450	2.4413	3.0467	3.3506	3.7910
Rural	0.149	0.141	0.130	0.124	0.107	0.099	0.090	0.096	0.107	0.100

Table 10. Shows the potential estimated impacts of updating the facility-level adjustments for FY 2023.

TABLE 10: Distributional Effects of the FY 2023 Facility Level Adjustment Factors

Facility Classification	Number of IRFs	Number of Cases	Rural Adjustment	LIP Adjustment	Teaching Adjustment
(1)	(2)	(3)	(4)	(5)	(6)
Total	1,115	380,165	0.0	0.0	0.0
Urban unit	653	143,947	0.2	0.3	1.6
Rural unit	133	17,660	-3.5	0.0	-2.5
Urban hospital	317	213,377	0.2	-0.2	-0.9
Rural hospital	12	5,181	-3.9	-0.7	-2.9
Urban For-Profit	396	206,158	0.2	-0.3	-1.9
Rural For-Profit	35	8,048	-3.8	-0.4	-2.8
Urban Non-Profit	489	132,251	0.2	0.3	1.9
Rural Non-Profit	88	12,252	-3.4	-0.1	-2.4
Urban Government	85	18,915	0.2	0.7	7.8
Rural Government	22	2,541	-3.5	0.1	-2.6
Urban	970	357,324	0.2	0.0	0.2
Rural	145	22,841	-3.6	-0.2	-2.6
Urban by region					
Urban New England	29	13,576	0.2	0.1	0.7
Urban Middle Atlantic	121	41,622	0.2	0.0	5.4
Urban South Atlantic	158	75,753	0.2	-0.2	-1.2
Urban East North Central	158	44,520	0.2	0.2	1.8
Urban East South Central	55	25,224	0.2	-0.4	-1.7
Urban West North Central	76	21,675	0.2	0.3	1.5
Urban West South Central	197	83,013	0.2	-0.6	-2.1
Urban Mountain	79	27,597	0.2	0.6	-0.7
Urban Pacific	97	24,344	0.2	1.4	-0.4
Rural by region					
Rural New England	5	1,116	-3.5	-0.3	-2.5
Rural Middle Atlantic	10	926	-3.4	-0.6	-2.4
Rural South Atlantic	16	4,000	-3.9	-0.8	-2.9
Rural East North Central	23	3,379	-3.5	-0.2	-2.5
Rural East South Central	20	3,626	-3.7	0.6	-2.8
Rural West North Central	20	2,579	-3.3	-0.4	-2.3
Rural West South Central	42	6,514	-3.6	-0.1	-2.6
Rural Mountain	6	379	-3.4	-0.3	-2.4
Rural Pacific	3	322	-1.7	1.1	-0.8
Teaching status					
Non-teaching	1,012	335,417	0.0	-0.2	-2.7
Resident to ADC less than 10%	59	32,213	0.2	0.9	9.0
Resident to ADC 10%-19%	34	11,327	0.2	0.7	23.8
Resident to ADC greater than 19%	10	1,208	0.2	1.6	102.1

Facility Classification	Number of IRFs	Number of Cases	Rural Adjustment	LIP Adjustment	Teaching Adjustment
Disproportionate share patient percentage (DSH PP)					
DSH PP = 0%	64	11,557	0.1	-1.8	-2.2
DSH PP <5%	127	49,049	-0.1	-1.6	-2.7
DSH PP 5%-10%	260	105,962	0.0	-1.0	-2.6
DSH PP 10%-20%	388	140,935	0.0	0.1	0.3
DSH PP greater than 20%	276	72,662	0.1	2.1	4.2

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Table 10 shows how we estimate that the application of the FY 2023 facility-level adjustment factors would affect particular groups if we were to implement updates to these factors for FY 2023. Table 10 categorizes IRFs by geographic location, including urban or rural location, and location for CMS' 9 Census divisions of the country. In addition, Table 10 divides IRFs into those that are separate rehabilitation hospitals (otherwise called freestanding hospitals in this section), those that are rehabilitation units of a hospital (otherwise called hospital units in this section), rural or urban facilities, ownership (otherwise called for-profit, non-profit, and government), by teaching status, and by disproportionate share patient percentage (DSH PP).

Note that, because the facility-level adjustment factors are implemented in a budget-neutral manner, total estimated aggregate payments to IRFs would not be affected. However, these updates would affect the distribution of payments across providers.

Typically, the facility-level adjustment factors have been updated on an intermittent basis to reflect changes in the costs of caring for patients. However, given the magnitude of the increases we are consistently seeing in the teaching status adjustment we do not believe that they are true reflections of the higher costs of teaching IRFs. In addition, we are concerned with the negative effects that the inordinately high teaching status adjustments would have on rural IRFs, given that the updates would be implemented in a budget neutral manner.

Given the changes in the teaching status adjustment and the rural adjustment from their 2014 levels and the potential payment impacts associated with these adjustments, we are soliciting comments from stakeholders on the methodology used to determine the facility-level

adjustment factors and suggestions for possible updates and refinements to this methodology. Additionally, we welcome ideas and suggestions as to what could be driving the changes observed in these adjustment factors from year-to-year.

IX. Solicitation of Comments Regarding the IRF Transfer Payment Policy

In the Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities final rule that appeared in the August 7, 2001 **Federal Register** (66 FR 41353 through 41355), we finalized a transfer payment policy under § 412.624(f) to provide for payments that more accurately reflect facility resources used and services delivered. This reflected our belief that it is important to minimize the inherent incentives specifically associated with the early transfer of patients in a discharge-based payment system. Specifically, we were concerned that incentives might exist for IRFs to discharge patients prematurely, as well as to admit patients that may not be able to endure intense inpatient therapy services. Even if patients were transferred before receiving the typical, full course of inpatient rehabilitation, the IRF could still be paid the full CMG payment rate in the absence of a transfer payment policy. Length of stay has been shown to be a good proxy measure of costs. Thus, in general, reducing lengths of stay would be profitable under the IRF prospective payment system. To address these concerns, we therefore implemented a transfer payment policy, which took effect beginning January 1, 2002, that, under certain circumstances, reduced the full CMG payment rate when a Medicare beneficiary is transferred.

The IRF transfer payment policy applies to IRF stays that are less than the average length of stay for the applicable CMG and tier and are transferred directly to another institutional site, including another IRF,

an inpatient hospital, a nursing home that accepts payment under Medicare and Medicaid, or a long-term care hospital. However, the IRF transfer payment policy currently does not apply to IRF stays that are less than the average length of stay for the applicable CMG and tier and are transferred to home health care.

In the August 7, 2001 final rule (66 FR 41353 through 41355), we stated that we did not propose to include early discharges to home health care as part of the transfer payment policy because there were analytical challenges as a result of the recent implementation of the new home health prospective payment system. However, to date, the analytical challenges would not present an issue as we feel the home health payment system is well established with an adequate supply of claims data.

A recent Office of Inspector General (OIG) report, "Early Discharges From Inpatient Rehabilitation Facilities to Home Health Services"¹² recommends that CMS expand the IRF transfer payment policy to apply to early discharges to home health. The OIG recommends that the IRF PPS should update its transfer payment policy, similar to the IPPS transfer payment policy, to include home health. The OIG conducted an audit of calendar year 2017 and 2018 Medicare claims data and determined that if CMS had expanded its IRF transfer payment policy to include early discharges to home health it could have realized a significant savings of approximately \$993 million over the 2-year period to Medicare.

Initially, home health was not added to the IRF transfer policy due to a lack of home health claims data under the newly-established prospective payment system that we could analyze to determine the impact of this policy

¹² Office of the Inspector General. December 7, 2021 Early Discharges From Inpatient Rehabilitation Facilities to Home Health Services [Report No. A-01-20-00501] <https://oig.hhs.gov>.

change. However, given the findings from the recent OIG report mentioned above, we plan to analyze home health claims data to determine the appropriateness of including home health in the IRF transfer policy:

- Beyond the existing Medicare claims data, under what circumstances, and for what types of patients (in terms of clinical, demographic, and geographic characteristics) do IRFs currently transfer patients to home health?

- Should we consider a policy similar to the IPPS transfer payment policy (see § 412.4(a), (b) and (c))—such as including as part of the IRF transfer payment policy a discharge from an IRF to home health under a written plan for the provision of home health services from a home health agency and those services to begin within 48 hours of referral, or within 48 hours of the patient's return home (see § 484.55(a)(1)), or on the provider's start of care date?

- What impact, if any, do stakeholders believe this proposed policy change could have on patient access to appropriate post-acute care services?

While we are not proposing to include home health care as part of the IRF transfer payment policy at this time, we hope to use this information from stakeholders in conjunction with our future analysis for potential rulemaking.

X. Inpatient Rehabilitation Facility (IRF) Quality Reporting Program (QRP)

A. Background and Statutory Authority

The Inpatient Rehabilitation Facility Quality Reporting Program (IRF QRP) is authorized by section 1886(j)(7) of the Act, and it applies to freestanding IRFs, as well as inpatient rehabilitation units of hospitals or Critical Access Hospitals (CAHs) paid by Medicare under the IRF PPS. Under the IRF QRP, the Secretary must reduce by 2 percentage points the annual increase factor for discharges occurring during a fiscal year for any IRF that does not submit data in accordance with the IRF QRP requirements established by the Secretary. For more information on the background and statutory authority for the IRF QRP, we refer readers to the FY 2012 IRF PPS final rule (76 FR 47873 through 47874), the CY 2013 Hospital Outpatient Prospective Payment System/Ambulatory Surgical Center

(OPPS/ASC) Payment Systems and Quality Reporting Programs final rule (77 FR 68500 through 68503), the FY 2014 IRF PPS final rule (78 FR 47902), the FY 2015 IRF PPS final rule (79 FR 45908), the FY 2016 IRF PPS final rule (80 FR 47080 through 47083), the FY 2017 IRF PPS final rule (81 FR 52080 through 52081), the FY 2018 IRF PPS final rule (82 FR 36269 through 36270), the FY 2019 IRF PPS final rule (83 FR 38555 through 38556), the FY 2020 IRF PPS final rule (84 FR 39054 through 39165) and the FY 2022 IRF PPS final rule (86 FR 42384 through 42408).

B. General Considerations Used for the Selection of Measures for the IRF QRP

For a detailed discussion of the considerations we use for the selection of IRF QRP quality, resource use, or other measures, we refer readers to the FY 2016 IRF PPS final rule (80 FR 47083 through 47084).

1. Quality Measures Currently Adopted for the FY 2023 IRF QRP

The IRF QRP currently has 18 measures for the FY 2023 program year, which are set out in Table 11.

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TABLE 11: Quality Measures Currently Adopted for the FY 2023 IRF QRP

Short Name	Measure Name & Data Source
IRF-PAI Assessment-Based Measures	
Pressure Ulcer/Injury	Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury.
Application of Falls	Application of Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay).
Application of Functional Assessment	Application of Percent of Long-Term Care Hospital (LTCH) Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (NQF #2631).
Change in Mobility	IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634).
Discharge Mobility Score	IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636).
Change in Self-Care	IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633).
Discharge Self-Care Score	IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635).
DRR	Drug Regimen Review Conducted With Follow-Up for Identified Issues—Post Acute Care (PAC) Inpatient Rehabilitation Facility (IRF) Quality Reporting Program (QRP).
TOH-Provider*	Transfer of Health Information to the Provider—Post-Acute Care (PAC).
TOH-Patient*	Transfer of Health Information to the Patient Post-Acute Care (PAC).
NHSN	
CAUTI	National Healthcare Safety Network (NHSN) Catheter-Associated Urinary Tract Infection Outcome Measure (NQF #0138).
CDI	National Healthcare Safety Network (NHSN) Facility-wide Inpatient Hospital-onset <i>Clostridium difficile</i> Infection (CDI) Outcome Measure (NQF #1717).
HCP Influenza Vaccine	Influenza Vaccination Coverage among Healthcare Personnel (NQF #0431).
HCP COVID-19 Vaccine	COVID-19 Vaccination Coverage among Healthcare Personnel (HCP)
Claims-Based	
MSPB IRF	Medicare Spending Per Beneficiary (MSPB)—Post Acute Care (PAC) IRF QRP (NQF #3561).
DTC	Discharge to Community—PAC IRF QRP (NQF #3479).
PPR 30 day	Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP.
PPR Within Stay	Potentially Preventable Within Stay Readmission Measure for IRFs.

*In response to the public health emergency (PHE) for the Coronavirus Disease 2019 (COVID-19), CMS released an interim final rule (85 FR 27595 through 27596) which delayed the compliance date for the collection and reporting of the Transfer of Health Information measures. The compliance date for the collection and reporting of the Transfer of Health Information measures was revised to October 1, 2022 in the CY 2022 Home Health Prospective Payment System Rate Update final rule (86 FR 62381 through 62386).

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There are no proposals in this proposed rule for new measures for the IRF QRP.

C. IRF QRP Quality Measure Concepts Under Consideration for Future Years: Request for Information (RFI)

We are seeking input on the importance, relevance, and applicability of each of the concepts under consideration listed in Table 12 for future years in the IRF QRP. More

specifically, we are seeking input on a cross-setting functional measure that would incorporate the domains of self-care and mobility. Our measure development contractor for the cross-setting functional outcome measure convened a Technical Expert Panel (TEP) on June 15 and June 16, 2021 to obtain expert input on the development of a functional outcome measure for PAC. During this meeting, the possibility of creating one measure to

capture both self-care and mobility was discussed. We are also seeking input on measures of health equity, such as structural measures that assess an organization’s leadership in advancing equity goals or assess progress towards achieving equity priorities. Finally, we seek input on the value of a COVID-19 Vaccination Coverage measure that would assess whether IRF patients were up to date on their COVID-19 vaccine.

TABLE 12: Future Measure Concepts Under Consideration for the IRF QRP

Quality Measure Concepts
Cross-Setting Function
Health equity Measures
PAC - COVID-19 Vaccination Coverage among Patients

While we will not be responding to specific comments in response to this Request for Information in the FY 2023 IRF PPS final rule, we intend to use this input to inform our future measure development efforts.

D. Inclusion of the National Healthcare Safety Network (NHSN) Healthcare-Associated Clostridioides Difficile Infection Outcome Measure in the IRF QRP—Request for Information

1. Background

The IRF QRP is authorized by section 1886(j)(7) of the Act and furthers our mission to improve the quality of health care for beneficiaries through measurement, transparency, and public reporting of data. The IRF QRP and CMS' other quality programs are foundational for contributing to improvements in health care, enhancing patient outcomes, and informing consumer choice. In October 2017, we launched the Meaningful Measures Framework. This framework captures our vision to address health care quality priorities and gaps, including emphasizing digital quality measurement (dQM), reducing measurement burden, and promoting patient perspectives, while also focusing on modernization and innovation. The scope of the Meaningful Measures Framework has evolved to accommodate the changes in the health care environment, initially focusing on measure and burden reduction to include the promotion of innovation and modernization of all aspects of quality.¹³ As a result, we have identified a need to streamline our approach to data collection, calculation, and reporting to fully leverage clinical and patient-centered information for measurement, improvement, and learning.

2. Potential Future Inclusion of an Electronic Health Record Driven Digital National Healthcare Safety Network (NHSN) Measure

In the FY 2015 IRF PPS final rule (79 FR 45913 through 45914), we finalized the National Healthcare Safety Network

(NHSN) Facility-Wide Inpatient Hospital-onset *Clostridium difficile* Infection (CDI) Outcome Measure (NQF #1717) for inclusion in the IRF QRP. *Clostridioides difficile* (*C. difficile*) is responsible for a spectrum of CDIs, including uncomplicated diarrhea, pseudomembranous colitis, and toxic megacolon, which can, in some instances, lead to sepsis and even death. CDIs are one of the most common healthcare-associated infections (HAIs), as healthcare-associated CDIs affected 0.54 percent of all hospitalizations in a 2015 survey.¹⁴ In 2017, the CDC estimated there were 223,900 CDIs requiring hospitalizations in the United States with 12,800 resulting in deaths.¹⁵ We have recently identified the NHSN Healthcare-Associated *Clostridioides Difficile* Infection (HA-CDI) Outcome measure as a potential measure which utilizes Electronic Health Record (EHR)-derived data to help address hospital-based adverse events, specifically hospital-onset infections.

CDIs are currently reported to the CDC's NHSN by various mechanisms, one of which is based on laboratory-identified events collected in the NHSN. The IRF QRP measure, the NHSN Facility-Wide Inpatient Hospital CDI Outcome Measure does not utilize EHR-derived data. Rather IRFs collect data and submit it on a monthly basis to the CDC's NHSN using the CDC's NHSN Multidrug-Resistant Organism & *Clostridioides difficile* Infection (MDRO/CDI) Module. The CDC has now developed the NHSN HA-CDI Outcome measure that utilizes EHR-derived data.

The newly-developed version of the measure, the NHSN HA-CDI, would improve on the original version of the measure in two ways. First, the new measure would require both microbiologic evidence of *C. difficile* in stool and evidence of antimicrobial

treatment, whereas the original measure only requires *C. difficile* facility-wide Laboratory-Identified (Lab-ID) event reporting. Second, consistent with the Meaningful Measures Framework, we specifically believe it would reduce reporting and regulatory burden on providers and accelerate the move to fully digital measures.¹⁶ We discuss each of these improvements below.

CDI testing practices have continued to evolve, with recent guidelines from the Infectious Disease Society of America recommending a multi-step testing algorithm to better distinguish between *C. difficile* colonization and active infection.¹⁷ However, the growing number of testing algorithms in use, each with different performance characteristics, poses a challenge for CDI surveillance. This new CDI measure defines CDI using both a positive microbiological test for *C. difficile* and evidence of treatment, increasing the specificity and sensitivity of the measure. Adding a requirement of CDI treatment to a CDI surveillance measure would increase the clinical validity of the measure, since a record of CDI treatment serves as a proxy for *C. difficile* test results that were interpreted as true infections by the clinician.

We believe there are important reasons for IRFs to adopt and utilize EHRs, although we understand that for IRFs who do not yet use EHRs, there will be initial implementation and training costs. EHRs facilitate moving to fully digital measures which we believe reduces reporting and regulatory burden on providers. Additionally, both

¹³ Meaningful Measures 2.0: Moving from Measure Reduction to Modernization. Available at <https://www.cms.gov/meaningful-measures-20-moving-measure-reduction-modernization>.

¹⁴ Magil S.M., O'Leary, E., Janelle, S. J. et al. Changes in Prevalence of Health Care-Associated Infections in U.S. Hospitals. *N Engl J Med* 2018; 379:1732–1744. Available at <https://www.nejm.org/doi/full/10.1056/NEJMoa1801550>. Accessed February 3, 2022.

¹⁵ U.S. Department of Health and Human Services. Centers for Disease Control and Prevention. Antibiotic Resistance Threats in the United States, 2019. Available at <https://www.cdc.gov/drugresistance/pdf/threats-report/2019-ar-threats-report-508.pdf>. Accessed February 3, 2022.

¹⁶ Centers for Medicare and Medicaid Services. (2021) Quality Measurement Action Plan. Available at <https://www.cms.gov/files/document/2021-cms-quality-conference-cms-quality-measurement-action-plan-march-2021.pdf>.

¹⁷ Clinical Practice Guidelines for *Clostridium difficile* Infection in Adults and Children: 2017 Update by the Infectious Diseases Society of America (IDSA) and Society for Healthcare Epidemiology of America (SHEA) (idsociety.org).

surveys^{18 19} and studies^{20 21} have demonstrated that when healthcare providers have access to complete and accurate information, patients receive better medical care, including timely identification and treatment of infections. We believe the utilization of EHRs can improve the ability to diagnose diseases and reduce (even prevent) medical errors, both of which improve patient outcomes. Additionally, the use of a fully digital measure using a Measure Calculation Tool (MCT) that pulls data directly from the EHR via a standardized FHIR interface would eliminate multiple steps for the provider, including creating or updating monthly reporting plans, and completing the data fields required for both numerator and denominator every month, even when no events were identified. Finally, the locally installed MCT would be responsible for extracting data, calculating the measure and submitting the data and would eliminate the need for the IRF to manually enter the data into the NHSN web-based application or via file imports. For example, if each IRF executed approximately one *C. difficile* event per month (12 events per IRF annually), then using 2020 Bureau of Labor Statistics (BLS) data,²² we estimate a potential cost savings of approximately 3 hours per IRF per year and a total of \$191.38 per IRF per year if a digital version of the measure replaced the NHSN-based measure.²³

¹⁸ King J., Patel, V., Jamoom, E., & Furukawa, M. (2012, August). Clinical Benefits of Electronic Health Record Use: National Findings. *Health Serv Res.* 2014 Feb; 49(1 pt 2): 392–404. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3925409/>.

¹⁹ Hoover, R. Benefits of using an electronic health record. *Nursing Critical Care: January 2017—Volume 12—Issue 1—p 9–10.* Available at https://journals.lww.com/nursingcriticalcare/fulltext/2017/01000/benefits_of_using_an_electronic_health_record.3.aspx.

²⁰ Escobar, G., Turk B., Ragins A., Ha J., et al. Piloting electronic medical record-based early detection of inpatient deterioration in community hospitals. *J Hosp Med.* 2016 Nov; 11 Suppl 1(Suppl 1):S18–S24. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5510649/>.

²¹ Uslu A., Stausberg J. Value of the Electronic Medical Record for Hospital Care: Update from the literature. *JMed internet Res* 2021;23(12):e26323. Available at <https://www.jmir.org/2021/12/e26323>.

²² U.S. bureau of Labor Statistics. Occupational Employment and Wage Statistics. May 2020 National Occupational Employment and Wage Estimates. United States. Available at https://www.bls.gov/oes/current/oes_nat.htm#43-0000. Accessed February 3, 2022.

²³ Estimated using 10 minutes of clinical nursing time (Occupation Code 29–1141) and 15 minutes of clerical time (Occupation Code 43–6013) necessary to enter the data into the NHSN.

3. Overview of the NHSN Healthcare-Associated Clostridioides difficile Infection Outcome Measure

The EHR driven digital version of the NHSN HA–CDI Outcome measure would track the development of new CDI among patients already admitted to IRFs, using algorithmic determinations from data sources widely available in EHRs.

The numerator would include those patient records with a qualifying *C. difficile*-positive assay on an inpatient encounter on day 4 or later of an IRF admission and with no previously positive event in ≤14 days before the IRF encounter, and new qualifying antimicrobial therapy for *C. difficile* started within the appropriate window period of stool specimen collection. The denominator would be the number of patients admitted to IRFs.

The NHSN HA–CDI Outcome measure would use the Standardized Infection Ratio (SIR) of hospital-onset CDIs among patients to compare within facility types. SIR is a primary summary statistic used by the NHSN to track HAIs. The Adjusted Ranking Metric (ARM) is a new statistic currently available for acute care hospitals that accounts for differences in the volume of exposure (specifically, in the denominator) between facilities. ARM provides complementary information to SIR and was developed for use in acute-care hospitals, but is also intended for use in post-acute care facilities.²⁴

4. Measure Application Partnership (MAP) Review

The NHSN HA–CDI Outcome measure (MUC2021–098) was included in the publicly available “List of Measures Under Consideration for December 1, 2021” (MUC List),²⁵ a list of measures under consideration for use in various Medicare programs, including the IRF QRP. This allows multi-stakeholder groups to provide recommendations to the Secretary on the measures included on the list.

The NHSN HA–CDI Outcome measure was included under the IRF QRP Program on the MUC List. The National Quality Forum (NQF)-convened MAP Post-Acute Care—Long Term Care (PAC–LTC) Workgroup met on January 19, 2022 and provided input on the proposed measure. The MAP offered conditional support of the NHSN HA–

²⁴ More information on how ARM and SIR compare can be found at <https://www.cdc.gov/nhsn/ps-analysis-resources/arm/index.html>.

²⁵ Centers for Medicare & Medicaid Services. List of Measures Under Consideration for December 1, 2021. Available at <https://www.cms.gov/files/document/measures-under-consideration-list-2021-report.pdf>. Accessed February 7, 2022.

CDI Outcome measure for rulemaking contingent upon NQF endorsement, noting that the measure has the potential to mitigate unintended consequences from the current measure’s design, which counts a case based on a positive test only, which may have led to a historical under-counting of observed HA–CDIs. The MAP recognized that the measure is consistent with the program’s priority to measure HAIs and the Patient Safety Meaningful Measures 2.0 area.²⁶ The final MAP report is available at https://www.qualityforum.org/Publications/2022/03/MAP_2021-2022_Considerations_for_Implementing_Measures_Final_Report_-_Clinicians,_Hospitals,_and_PAC-LTC.aspx.

5. Data Sources

The data source for the NHSN HA–CDI Outcome measure would be the IRFs’ EHR. The primary sources of data for determining numerator events would include microbiology data (*C. difficile* infection test), medication administration data (*C. difficile* infection antimicrobial treatment), and patient encounter, demographic, and location information.

To facilitate rapid, automated, and secure data exchange, the CDC’s NHSN is planning to enable and promote reporting of this measure using Health Level 7 (HL7) Fast Healthcare Interoperability Resources (FHIR). However, as HL7 FHIR capabilities are evolving and not uniform across healthcare systems, CDC is also planning on enabling reporting using the existing HL7 Clinical Document Architecture (CDA), and potentially other formats as well in order to provide all facilities with an option for reporting. Furthermore, this measure would not immediately replace the current NHSN CDI measure. NHSN would continue to host and support the current CDI measure until sufficient experience is achieved with the new measure to phase out the current CDI measure in each applicable setting.

6. Solicitation of Public Comment

In this proposed rule, we are requesting stakeholder input on the potential electronic submission of quality data from IRFs via their EHRs under the IRF QRP. We specifically seek comment on the future inclusion of the NHSN Healthcare-Associated *Clostridioides difficile* Infection Outcome measure (HA–CDI)

²⁶ 2021–2022 MAP Final Recommendations. Available at <https://www.qualityforum.org/map/>. Accessed February 3, 2021.

(MUC2021–098) as a digital quality measure in the IRF QRP.

Specifically, we seek comment on the following:

- Would you support utilizing IRF EHRs as the mechanism of data collection and submission for IRF QRP measures?
- Would your EHR support exposing data via HL7 FHIR to a locally installed MCT? For IRFs using certified health IT systems, how can existing certification criteria under the Office of the National Coordinator (ONC) Health Information Technology (IT) Certification Program support reporting of this data? What updates, if any, to the Certification Program would be needed to better support capture and submission of this data?
- Is a transition period between the current method of data submission and an electronic submission method necessary? If so, how long of a transition would be necessary and what specific factors are relevant in determining the length of any transition?
- Would vendors, including those that service IRFs, be interested in or willing to participate in pilots or voluntary electronic submission of quality data?
- Do IRFs anticipate challenges, other than the adoption of EHR to adopting the HA–CDI, and if so, what are potential solutions for those challenges?

While we will not be responding to specific comments submitted in response to this RFI in the FY 2023 IRF PPS final rule, we will actively consider all input as we develop future regulatory proposals. Any updates to specific program requirements related to quality measurement and reporting provisions would be addressed through separate and future notice-and-comment rulemaking, as necessary.

E. Overarching Principles for Measuring Equity and Healthcare Quality Disparities Across CMS Quality Programs—Request for Information

Significant and persistent disparities in healthcare outcomes exist in the United States. Belonging to an underserved community is often associated with worse health outcomes.^{27 28 29 30 31 32 33 34 35} With this

in mind, CMS aims to advance health equity, by which we mean the attainment of the highest level of health for all people, where everyone has a fair and just opportunity to attain their optimal health regardless of race, ethnicity, disability, sexual orientation, gender identity, socioeconomic status, geography, preferred language, or other factors that affect access to care and health outcomes. CMS is working to advance health equity by designing, implementing, and operationalizing policies and programs that support health for all the people served by our programs, eliminating avoidable differences in health outcomes experienced by people who are disadvantaged or underserved, and providing the care and support that our beneficiaries need to thrive.³⁶

We are committed to achieving equity in healthcare outcomes for our enrollees by supporting healthcare providers' quality improvement activities to reduce health disparities, enabling them to make more informed decisions, and promoting healthcare provider accountability for healthcare disparities.³⁷ Measuring healthcare

disparities in quality measures is a cornerstone of our approach to advancing healthcare equity. Hospital performance results that illustrate differences in outcomes between patient populations have been reported to hospitals confidentially since 2015. We provide additional information about this program in section X.E.1.a. of this proposed rule.

This RFI consists of three sections. The first section discusses a general framework that could be utilized across CMS quality programs to assess disparities in healthcare quality. The next section outlines approaches that could be used in the IRF QRP to assess drivers of healthcare quality disparities in the IRF QRP. Additionally, this section discusses measures of health equity that could be adapted for use in the IRF QRP. Finally, the third section solicits public comment on the principles and approaches listed in the first two sections as well as seeking other thoughts about disparity measurement guidelines for the IRF QRP.

1. Cross-Setting Framework To Assess Healthcare Quality Disparities

CMS has identified five key considerations that we could apply consistently across CMS programs when advancing the use of measurement and stratification as tools to address health care disparities and advance health equity. The remainder of this section describes each of these considerations.

a. Identification of Goals and Approaches for Measuring Healthcare Disparities and Using Measures Stratification Across CMS Quality Programs

By quantifying healthcare disparities through measure stratification (that is, measuring performance differences among subgroups of beneficiaries), we aim to provide useful tools for healthcare providers to drive improvement based on data. We hope that these results support healthcare providers efforts in examining the underlying drivers of disparities in their patients' care and to develop their own innovative and targeted quality improvement interventions. Quantification of health disparities can also support communities in prioritizing and engaging with healthcare providers to execute such interventions, as well as providing additional tools for accountability and decision-making.

There are several different conceptual approaches to reporting health

³⁰ Polyakova, M., et al. (2021). Racial disparities in excess all-cause mortality during the early COVID–19 pandemic varied substantially across states. *Health Affairs*, 40(2): 307–316.

³¹ Rural Health Research Gateway. (2018). Rural communities: Age, Income, and Health status. Rural Health Research Recap. Available at <https://www.ruralhealthresearch.org/assets/2200-8536/rural-communities-age-income-health-status-recap.pdf>. Accessed February 3, 2022.

³² U.S. Department of Health and Human Services. Office of the Secretary. Progress Report to Congress. HHS Office of Minority Health. 2020 Update on the Action Plan to Reduce Racial and Ethnic Health Disparities. FY 2020. Available at https://www.minorityhealth.hhs.gov/assets/PDF/Update_HHS_Disparities_Dept-FY2020.pdf. Accessed February 3, 2022.

³³ Centers for Disease Control and Prevention. Morbidity and Mortality Weekly Report (MMWR). Heslin, KC, Hall JE. Sexual Orientation Disparities in Risk Factors for Adverse COVID–19-Related Outcomes, by Race/Ethnicity—Behavioral Risk Factor Surveillance System, United States, 2017–2019. February 5, 2021/70(5); 149–154. Available at https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a1.htm?s_cid=mm7005a1_w. Accessed February 3, 2022.

³⁴ Poteat TC, Reisner SL, Miller M, Wirtz AL. (2020). COVID–19 vulnerability of transgender women with and without HIV infection in the Eastern and Southern U.S. preprint. medRxiv. 2020;2020.07.21. 20159327. doi:10.1101/2020.07.21.20159327.

³⁵ Milkie Vu et al. Predictors of Delayed Healthcare Seeking Among American Muslim Women. *Journal of Women's Health* 26(6) (2016) at 58; S.B. Nadimpalli, et al., *The Association between Discrimination and the Health of Sikh Asian Indians*.

³⁶ Centers for Medicare and Medicaid Services. Available at <https://www.cms.gov/pillar/health-equity>. Accessed February 9, 2022.

³⁷ CMS Quality Strategy. 2016. Available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiatives>

[geninfo/downloads/cms-quality-strategy.pdf](https://www.cms.gov/geninfo/downloads/cms-quality-strategy.pdf). Accessed February 3, 2022.

²⁷ Joynt KE, Orav E, Jha AK. (2011). Thirty-day readmission rates for Medicare beneficiaries by race and site of care. *JAMA*, 305(7):675–681.

²⁸ Lindenauer PK, Lagu T, Rothberg MB, et al. (2013). Income inequality and 30-day outcomes after acute myocardial infarction, heart failure, and pneumonia: Retrospective cohort study. *British Medical Journal*, 346.

²⁹ Trivedi AN, Nsa W, Hausmann LRM, et al. (2014). Quality and equity of care in U.S. hospitals. *New England Journal of Medicine*, 371(24):2298–2308.

disparities in the acute care setting, including two complementary approaches that are already used to confidentially provide disparity information to hospitals for a subset of existing measures. The first approach, referred to as the “within-hospital disparity method,” compares measure performance results for a single measure between subgroups of patients with and without a given factor. This type of comparison directly estimates disparities in outcomes between subgroups and can be helpful to identify potential disparities in care. This type of approach can be used with most measures that include patient-level data. The second approach, referred to as the “between-hospital disparity methodology,” provides performance on measures for only the subgroup of patients with a particular social risk factor. These approaches can be used by a healthcare provider to compare their own measure performance on a particular subgroup of patients against subgroup-specific state and national benchmarks. Alone, each approach may provide an incomplete picture of disparities in care for a particular measure, but when reported together with overall quality performance, these approaches may provide detailed information about where differences in care may exist or where additional scrutiny may be appropriate. For example, the between-provider disparity method may indicate that an IRF underperformed (when compared to other facilities on average) for patients with a given social risk factor, which would signal the need to improve care for this population. However, if the IRF also underperformed for patients without that social risk factor, the measured difference, or disparity in care, (the “within-hospital” disparity, as described above) could be negligible even though performance for the group that has been historically marginalized remains poor. We refer readers to the technical report describing the CMS Disparity Methods in detail as well as the FY 2018 IPPS/LTCH PPS final rule (82 FR 38405 through 38407) and the posted Disparity Methods Updates and Specifications Report posted on the QualityNet website.³⁸

CMS is interested in whether similar approaches to the two discussed in the previous paragraph could be used to produce confidential stratified measure results for selected IRF QRP measures,

³⁸ Centers for Medicare & Medicaid Services (CMS), HHS. Disparity Methods Confidential Reporting. Available at <https://qualitynet.cms.gov/inpatient/measures/disparity-methods>. Accessed February 3, 2022.

as appropriate and feasible. However, final decisions regarding disparity reporting will be made at the program-level, as CMS intends to tailor the approach used in each setting to achieve the greatest benefit and avoid unintentional consequences or biases in measurement that may exacerbate disparities in care.

b. Guiding Principles for Selecting and Prioritizing Measures for Disparity Reporting

We intend to expand our efforts to provide stratified reporting for additional clinical quality measures, provided they offer meaningful, actionable, and valid feedback to healthcare providers on their care for populations that may face social disadvantage or other forms of discrimination or bias. We are mindful, however, that it may not be possible to calculate stratified results for all quality measures, and that there may be situations where stratified reporting is not desired. To help inform prioritization of the next generation of candidate measures for stratified reporting, we aim to receive feedback on several systematic principles under consideration that we believe will help us prioritize measures for disparity reporting across programs:

(1) Programs may consider stratification among existing *clinical quality measures for further disparity reporting*, prioritizing recognized measures which have met industry standards for measure reliability and validity.

(2) Programs may consider measures for prioritization that show *evidence that a treatment or outcome being measured is affected by underlying healthcare disparities* for a specific social or demographic factor. Literature related to the measure or outcome should be reviewed to identify disparities related to the treatment or outcome, and should carefully consider both social risk factors and patient demographics. In addition, analysis of Medicare-specific data should be done in order to demonstrate evidence of disparity in care for some or most healthcare providers that treat Medicare patients.

(3) Programs may consider establishing *statistical reliability and representation standards* (for example, the percent of patients with a social risk factor included in reporting facilities) prior to reporting results. They may also consider prioritizing measures that reflect performance on greater numbers of patients to ensure that the reported results of the disparity calculation are reliable and representative.

(4) After completing stratification, programs may consider prioritizing the *reporting of measures that show differences in measure performance* between subgroups across healthcare providers.

c. Principles for Social Risk Factor and Demographic Data Selection and Use

Social risk factors are the wide array of non-clinical drivers of health known to negatively impact patient outcomes. These include factors such as socioeconomic status, housing availability, and nutrition (among others), often inequitably affecting historically marginalized communities on the basis of race and ethnicity, rurality, sexual orientation and gender identity, religion, and disability.^{39 40 41 42 43 44 45 46}

Identifying and prioritizing social risk or demographic variables to consider for disparity reporting can be challenging. This is due to the high number of variables that have been identified in the literature as risk factors for poorer health outcomes and the limited availability of many self-reported social risk factors and demographic factors across the healthcare sector. Several proxy data sources, such as area-based indicators of social risk and imputation methods, may be used if individual

³⁹ Joynt KE, Orav E, Jha AK. (2011). Thirty-day readmission rates for Medicare beneficiaries by race and site of care. *JAMA*, 305(7):675–681.

⁴⁰ Lindenauer PK, Lagu T, Rothberg MB, et al. (2013). Income inequality and 30-day outcomes after acute myocardial infarction, heart failure, and pneumonia: Retrospective cohort study. *British Medical Journal*, 346.

⁴¹ Trivedi AN, Nsa W, Hausmann LRM, et al. (2014). Quality and equity of care in U.S. hospitals. *New England Journal of Medicine*, 371(24):2298–2308.

⁴² Polyakova, M., et al. (2021). Racial disparities in excess all-cause mortality during the early COVID-19 pandemic varied substantially across States. *Health Affairs*, 40(2): 307–316.

⁴³ Rural Health Research Gateway. (2018). Rural communities: Age, Income, and Health status. Rural Health Research Recap. Available at <https://www.ruralhealthresearch.org/assets/2200-8536/rural-communities-age-income-health-status-recap.pdf>. Accessed February 3, 2022.

⁴⁴ HHS Office of Minority Health (2020). 2020 Update on the Action Plan to Reduce Racial and Ethnic Health Disparities. Available at https://www.minorityhealth.hhs.gov/assets/PDF/Update_HHS_Disparities_Dept-FY2020.pdf. Accessed February 3, 2022.

⁴⁵ Poteat TC, Reisner SL, Miller M, Wirtz AL. 2020. COVID-19 vulnerability of transgender women with and without HIV infection in the Eastern and Southern U.S. medRxiv [Preprint]. 2020.07.21.20159327. doi: 10.1101/2020.07.21.20159327. PMID: 32743608; PMCID: PMC7386532.

⁴⁶ Milkie Vu et al. Predictors of Delayed Healthcare Seeking Among American Muslim Women. *Journal of Women's Health* 26(6) (2016) at 58; S.B. Nadimpalli, et al., The Association between Discrimination and the Health of Sikh Asian Indians.

patient-level data is not available. Each source of data has advantages and disadvantages for disparity reporting:

- *Patient-reported data* are considered to be the gold standard for evaluating quality of care for patients with social risk factors.⁴⁷ While data sources for many social risk factors and demographic variables are still developing among several CMS settings, demographic data elements collected through assessments already exist in IRFs. Beginning October 1, 2022, IRFs (86 FR 62386) will also begin collecting additional standardized patient data elements about race, ethnicity, preferred language, transportation, health literacy, and social isolation.

- *CMS Administrative Claims data* have long been used for quality measurement due to their availability and will continue to be evaluated for usability in measure development and or stratification. Using these existing data allows for high impact analyses with negligible healthcare provider burden. For example, dual eligibility for Medicare and Medicaid has been found to be an effective indicator of social risk in beneficiary populations.⁴⁸ There are, however, limitations in these data's usability for stratification analysis.

- *Area-based indicators of social risk* create approximations of patient risk based on the neighborhood or context that a patient resides in. Several indexes, such as Agency for Healthcare Research and Quality (AHRQ) Socioeconomic Status (SES) Index,⁴⁹ Centers for Disease Control and Prevention/Agency for Toxic Substances and Disease Registry (CDC/ATSDR) Social Vulnerability Index (SVI),⁵⁰ and

Health Resources and Services Administration (HRSA) Area Deprivation Index (ADI),⁵¹ provide multifaceted contextual information about an area and may be considered as an efficient way to stratify measures that include many social risk factors.

- *Imputed data sources* use statistical techniques to estimate patient-reported factors, including race and ethnicity. One such tool is the Medicare Bayesian Improved Surname Geocoding (MBISG) method (currently in version 2.1), which combines information from administrative data, surname, and residential location to estimate patient race and ethnicity.⁵²

d. Identifying Meaningful Performance Differences

While we aim to use standardized approaches where possible, identifying differences in performance on stratified results will be made at the program level due to contextual variations across programs and settings. We look forward to feedback on the benefits and limitations of the possible reporting approaches described below:

- *Statistical approaches* could be used to reliably group results, such as using confidence intervals, creating cut points based on standard deviations, or using a clustering algorithm.
- Programs could use a *ranked ordering and percentile approach*, ordering healthcare providers in a ranked system based on their performance on disparity measures to quickly allow them to compare their performance to other similar healthcare providers.
- Healthcare providers could be categorized into groups based on their performance using *defined thresholds*, such as fixed intervals of results of disparity measures, indicating different levels of performance.
- *Benchmarking*, or comparing individual results to state or national

vulnerability index for disaster management. *Journal of Homeland Security and Emergency Management*, 8(1). Available at https://www.atsdr.cdc.gov/placeandhealth/svi/img/pdf/Flanagan_2011_SVIforDisasterManagement-508.pdf. Accessed February 3, 2022.

⁵¹ Center for Health Disparities Research. University of Wisconsin School of Medicine and Public Health. Neighborhood Atlas. Available at <https://www.neighborhoodatlas.medicine.wisc.edu/>. Accessed February 3, 2022.

⁵² Haas A., Elliott M.N., Dembosky J.W., Adams J.L., Wilson-Frederick S.M., Mallett J.S., Gaillot S., Haffer S.C., Haviland A.M. (2019). Imputation of race/ethnicity to enable measurement of HEDIS performance by race/ethnicity. *Health Serv Res*, 54(1):13–23. doi: 10.1111/1475-6773.13099. Epub 2018 Dec 3. PMID: 30506674; PMCID: PMC6338295. Imputation of race/ethnicity to enable measurement of HEDIS performance by race/ethnicity. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6338295/pdf/HESR-54-13.pdf>. Accessed February 3, 2022.

average, is another potential reporting strategy.

- Finally, a ranking system may not be appropriate for all programs and care settings, and some programs may *only report disparity results*.

e. Guiding Principles for Reporting Disparity Measures

Reporting of the results discussed above can be employed in several ways to drive improvements in quality. Confidential reporting, or reporting results privately to healthcare providers, is generally used for new programs or new measures recently adopted for programs through notice and comment rulemaking to give healthcare providers an opportunity to become more familiar with calculation methods and to improve before other forms of reporting are used. In addition, many results are reported publicly, in accordance with the statute. This method provides all stakeholders with important information on healthcare provider quality, and in turn, relies on market forces to incentivize healthcare providers to improve and become more competitive in their markets without directly influencing payment from CMS. One important consideration is to assess differential impact on IRFs, such as those located in rural, or critical access areas, to ensure that reporting does not disadvantage already resource-limited settings. The type of reporting chosen by programs will depend on the program context.

Regardless of the methods used to report results, it is important to report stratified measure data alongside overall measure results. Review of both measures results along with stratified results can illuminate greater levels of detail about quality of care for subgroups of patients, providing important information to drive quality improvement. Unstratified quality measure results address general differences in quality of care between healthcare providers and promote improvement for all patients, but unless stratified results are available, it is unclear if there are subgroups of patients that benefit most from initiatives. Notably, even if overall quality measure scores improve, without identifying and measuring differences in outcomes between groups of patients, it is impossible to track progress in reducing disparity for patients with heightened risk of poor outcomes.

⁴⁷ Jarrín OF, Nyandegge AN, Grafova IB, Dong X, Lin H. (2020). Validity of race and ethnicity codes in Medicare administrative data compared with gold-standard self-reported race collected during routine home health care visits. *Med Care*, 58(1):e1–e8. doi: 10.1097/MLR.0000000000001216. PMID: 31688554; PMCID: PMC6904433.

⁴⁸ Office of the Assistant Secretary for Planning and Evaluation. Report to Congress: Social Risk Factors and Performance Under Medicare's Value-Based Purchasing Program. December 20, 2016. Available at <https://www.aspe.hhs.gov/reports/report-congress-social-risk-factors-performance-under-medicare-value-based-purchasing-programs>. Accessed February 3, 2022.

⁴⁹ Bonito A., Bann C., Eicheldinger C., Carpenter L. *Creation of New Race-Ethnicity Codes and Socioeconomic Status (SES) Indicators for Medicare Beneficiaries*. Final Report, Sub-Task 2. (Prepared by RTI International for the Centers for Medicare and Medicaid Services through an interagency agreement with the Agency for Healthcare Research and Policy, under Contract No. 500-00-0024, Task No. 21) AHRQ Publication No. 08-0029-EF. Rockville, MD, Agency for Healthcare Research and Quality. January 2008. Available at <https://archive.ahrq.gov/research/findings/final-reports/medicareindicators/medicareindicators1.html>. Accessed February 7, 2022.

⁵⁰ Flanagan, B.E., Gregory, E.W., Hallisey, E.J., Heitgerd, J.L., Lewis, B. (2011). A social

2. Approaches To Assessing Drivers of Healthcare Quality Disparities and Developing Measures of Healthcare Equity in the IRF QRP

This section presents information on two approaches for the IRF QRP. The first section presents information about a method that could be used to assist IRFs in identifying potential drivers of healthcare quality disparities. The second section describes measures of healthcare equity that might be appropriate for inclusion in the IRF QRP.

a. Performance Disparity Decomposition

In response to the FY 2022 IRF PPS proposed rule's RFI (86 FR 19110 through 19112), "Closing the Health Equity Gap in Post-Acute Care Quality Reporting Programs", some stakeholders noted that, while stratified results provide more information about disparities compared to overall measure scores, they provide limited information towards understanding the drivers of these disparities. As a result, it is up to the IRFs to determine which factors are leading to performance gaps so that they can be addressed. Unfortunately, identifying which factors are contributing to the performance gaps may not always be straightforward, especially if the IRF has limited information or resources to determine the extent to which a patient's social determinants of health (SDOH) or other mediating factors (for example: Health histories) explain a given disparity. An additional complicating factor is the reality that there are likely multiple SDOH and other mediating factors responsible for a given disparity, and it may not be obvious to the IRF which of these factors are the primary drivers.

Consequently, CMS may consider methods to use the data already available in enrollment, claims, and assessment data to estimate the extent to which various SDOH (for example, transportation, health literacy) and other mediating factors drive disparities in an effort to provide more actionable information. Researchers have utilized decomposition techniques to examine inequality in health care and, specifically, as a way to understand and explain the underlying causes of inequality.⁵³ At a high level, regression decomposition is a method that allows one to estimate the extent to which disparities (that is, differences) in

measure performance between subgroups of patient populations are due to specific factors. These factors can be either non-clinical (for example, SDOH) or clinical. Similarly, CMS may utilize regression decomposition to identify and calculate the specific contribution of SDOHs and other mediating factors to observed disparities. This approach may better inform our understanding of the extent to which providers and policy-makers may be able to narrow the gap in healthcare outcomes. Additionally, provider-specific decomposition results could be shared through confidential results so that IRFs can see the disparities within their facility with more granularity, allowing them to set priority targets in some performance areas while knowing which areas of their care are already relatively equitable. Importantly, these results could help IRFs identify reasons for disparities that might not be obvious without having access to additional data sources (for example: The ability to link data across providers).

To more explicitly demonstrate the types of information that could be provided through decomposition of a measure disparity, consider the following example for a given IRF. Figures 1 through 3 depict an example (using hypothetical data) of how a disparity in a measure of Medicare Spending Per Beneficiary (MSPB) between dual eligible beneficiaries (that is, those enrolled in Medicare and Medicaid) and non-dual eligible beneficiaries (that is, those with Medicare only) could be decomposed among two mediating factors, one SDOH and one clinical factor: (1) Low health literacy and (2) high volume of emergency department (ED) use. These examples were selected because if they were shown to be drivers of disparity in their IRF, the healthcare provider could mitigate their effects. Additionally, high volume ED use is used as a potential mediating factor that could be difficult for IRFs to determine on their own, as it would require having longitudinal data for patients across multiple facilities.

In Figure 1, the overall Medicare spending disparity is \$1,000: Spending, on average, is \$5,000 per non-dual beneficiary and \$6,000 per dual beneficiary. We can also see from Figure 2 that in this IRF, the dual population has twice the prevalence of beneficiaries with low health literacy and high ED use compared to the non-dual population. Using regression techniques, the difference in overall spending between non-dual and dual beneficiaries can be divided into three

causes: (1) A difference in the prevalence of mediating factors (for example: Low health literacy and high ED use) between the two groups, (2) a difference in how much spending is observed for beneficiaries with these mediating factors between the two groups, and (3) differences in baseline spending that are not due to either (1) or (2). In Figure 3, the 'Non-Dual Beneficiaries' column breaks down the overall spending per non-dual beneficiary, \$5,000, into a baseline spending of \$4,600 plus the effects of the higher spending for the 10 percent of non-dual beneficiaries with low health literacy (\$300) and the 5 percent with high ED use (\$100). The 'Dual Beneficiaries' column similarly decomposes the overall spending per dual beneficiary (\$6,000) into a baseline spending of \$5,000, plus the amounts due to dual beneficiaries' 20 percent prevalence of low health literacy (\$600, twice as large as the figure for non-dual beneficiaries because the prevalence is twice as high), and dual beneficiaries' 10 percent prevalence of high-volume ED use (\$200, similarly twice as high as for non-dual beneficiaries due to higher prevalence). This column also includes an additional \$100 per risk factor because dual beneficiaries experience a higher cost than non-dual beneficiaries within the low health literacy risk factor, and similarly within the high ED use risk factor. Based on this information, an IRF can determine that the overall \$1,000 disparity can be divided into differences simply due to risk factor prevalence ($\$300 + \$100 = \$400$ or 40 percent of the total disparity), disparities in costs for beneficiaries with risk factors ($\$100 + \$100 = \$200$ or 20 percent) and disparities that remain unexplained (differences in baseline costs: \$400 or 40 percent).

In particular, the IRF can see that simply having more patients with low health literacy and high ED use accounts for a disparity of \$400. In addition, there is still a \$200 disparity stemming from differences in costs between non-dual and dual patients for a given risk factor, and another \$400 that is not explained by either low health literacy or high ED use. These differences may instead be explained by other SDOH that have not yet been included in this breakdown, or by the distinctive pattern of care decisions made by providers for dual and non-dual beneficiaries. These cost estimates would provide additional information that facilities could use when determining where to devote resources aimed at achieving equitable health

⁵³ Rahimi E, Hashemi Nazari S. A detailed explanation and graphical representation of the Blinder-Oaxaca decomposition method with its application in health inequalities. *Emerg Themes Epidemiol.* (2021)18:12. <https://doi.org/10.1186/s12982-021-00100-9>. Retrieved 2/24/2022.

outcomes (that is, facilities may choose to focus efforts on the largest drivers of a disparity).

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Figure 1

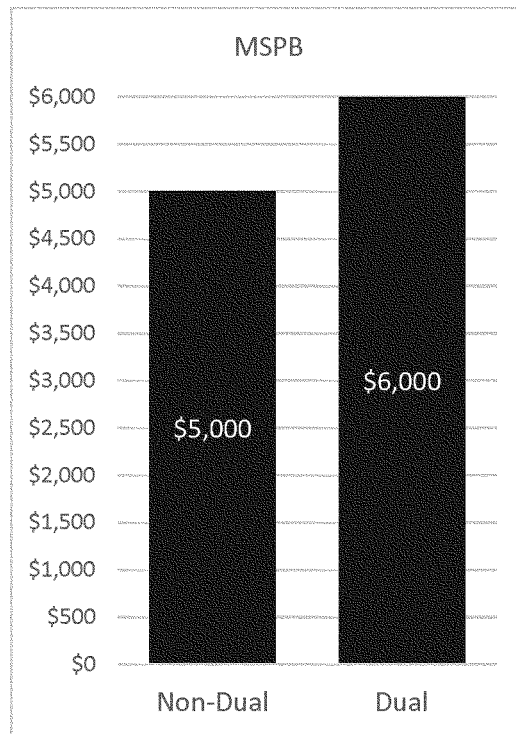


Figure 2

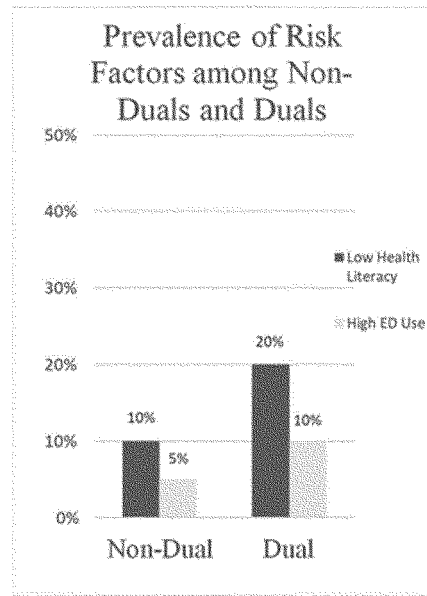
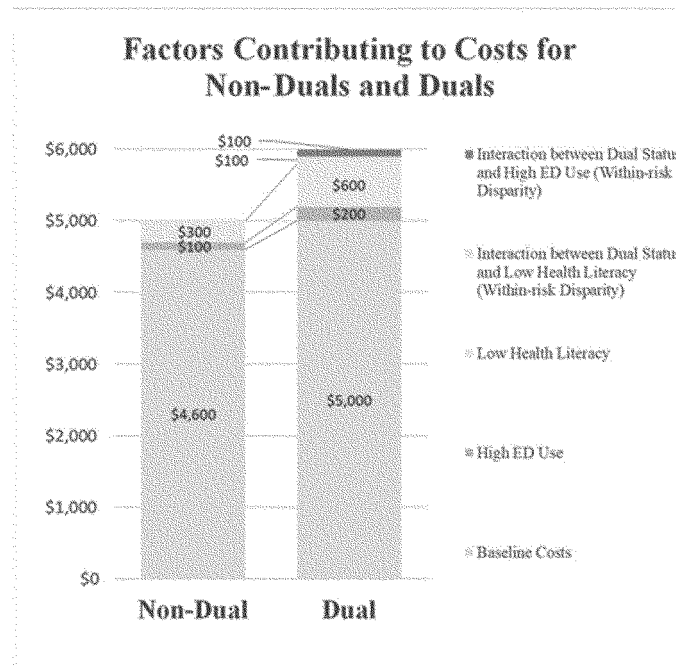


Figure 3



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b. Measures Related to Health Equity

Beyond identifying disparities in individual health outcomes and by individual risk factors, there is interest in developing more comprehensive measures of health equity that reflect organizational performance. When determining which equity measures could be prioritized for development for IRF QRP, CMS may consider the following:

- Measures should be actionable in terms of quality improvement;
 - Measures should help beneficiaries and their caregivers make informed healthcare decisions;
 - Measures should not create incentives to lower the quality of care; and
 - Measures should adhere to high scientific acceptability standards.
- CMS has developed measures assessing health equity, or designed to promote health equity, in other settings

outside of the IRF. As a result, there may be measures that could be adapted for use in the IRF QRP. The remainder of this section discusses two such measures, beginning with the Health Equity Summary Score (HESS), and then a structural measure assessing the degree of hospital leadership engagement in health equity performance data.

(1) Health Equity Summary Score

The HESS measure was developed by the CMS OMH^{54 55} to identify and to reward healthcare providers (that is, Medicare Advantage [MA] plans) that perform relatively well on measures of care provided to beneficiaries with social risk factors (SRFs), as well as to discourage the non-treatment of patients who are potentially high-risk, in the context of value-based purchasing. Additionally, a version of the HESS is under consideration for the Hospital Inpatient Quality Reporting (HIQR) program.⁵⁶ The HESS composite measure provides a summary of equity of care delivery by combining performance and improvement across multiple measures and multiple at-risk groups. The HESS was developed with the following goals: Allow for “multiple grouping variables, not all of which will be measurable for all plans,” allow for “disaggregation by grouping variable for nuanced insights,” and allow for the future usage of additional and different SRFs for grouping.⁵⁷

The HESS computes across-provider disparity in performance, as well as within-provider and across-provider disparity improvement in performance. Calculation starts with a cross-sectional score and an overall improvement score for each SRF of race/ethnicity and dual eligibility, for each plan. The overall improvement score is based on two separate improvement metrics: Within-plan improvement and nationally benchmarked improvement. Within-plan improvement is defined as how that plan improves the care of patients with SRFs relative to higher-performing patients between the baseline period and performance period, and is targeted at eliminating within-plan disparities.

⁵⁴ Agniel D., Martino S.C., Burkhart Q., Hambarsoomian K., Orr N., Beckett M.K., James C., Scholle S.H., Wilson-Frederick S., Ng J., Elliott M.N. (2021). Incentivizing excellent care to at-risk groups with a health equity summary score. *J Gen Intern Med*, 36(7):1847–1857. doi: 10.1007/s11606-019-05473-x. Epub 2019 Nov 11. PMID: 31713030; PMID: PMC8298664. Available at <https://link.springer.com/content/pdf/10.1007/s11606-019-05473-x.pdf>. Accessed February 3, 2022.

⁵⁵ 2021 Quality Conference. Health Equity as a “New Normal”: CMS Efforts to Address the Causes of Health Disparities. Available at https://s3.amazonaws.com/bizzabo.file.upload/83kO1DYXTs6mKHjVtuk8_1%20-%20Session%2023%20Health%20Equity%20New%20Normal%20FINAL_508.pdf. Accessed March 2, 2022.

⁵⁶ Centers for Medicare & Medicaid Services, FY 2022 IPPS/LTCH PPS Proposed Rule. 88 FR 25560. May 10, 2021.

⁵⁷ Centers for Medicare & Medicaid Services Office of Minority Health (CMS OMH). 2021b. “Health Equity as a ‘New Normal’: CMS Efforts to Address the Causes of Health Disparities.” Presented at CMS Quality Conference, March 2–3, 2021.

Nationally benchmarked improvement is improvement of care for beneficiaries with SRFs served by that MA plan, relative to the improvement of care for similar beneficiaries across all MA plans, and is targeted at improving the overall care of populations with SRFs. Within-plan improvement and nationally benchmarked improvement are then combined into an overall improvement score. Meanwhile, the cross-sectional score measures overall measure performance among beneficiaries with SRFs during the performance period, regardless of improvement.

To calculate a provider’s overall score, the HESS uses a composite of five clinical quality measures based on HEDIS data and seven MA Consumer Assessment of Healthcare Providers and Systems (CAHPS) patient experience measures. A provider’s overall HESS score is calculated once using only CAHPS-based measures and once using only HEDIS-based measures, due to incompatibility between the two data sources. The HESS uses a composite of these measures to form a cross-sectional score, a nationally benchmarked improvement score, and a within-plan improvement score, one for each SRF. These scores are combined to produce an SRF-specific blended score, which is then combined with the blended score for another SRF to produce the overall HESS.

(2) Degree of Hospital Leadership Engagement in Health Equity Performance Data

We have developed a structural measure for use in acute care hospitals assessing the degree to which hospital leadership is engaged in the collection of health equity performance data, with the motivation that that organizational leadership and culture can play an essential role in advancing equity goals. This structural measure, entitled the Hospital Commitment to Health Equity measure (MUC2021–106) was included on the 2021 CMS List of Measures Under Consideration (MUC List)⁵⁸ and assesses hospital commitment to health equity using a suite of equity-focused organizational competencies aimed at achieving health equity for racial and ethnic minorities, people with disabilities, sexual and gender minorities, individuals with limited English proficiency, rural populations, religious minorities, and people facing socioeconomic challenges. The measure

⁵⁸ Centers for Medicare & Medicaid Services. List of Measures Under Consideration for December 1, 2021. Available at <https://www.cms.gov/files/document/measures-under-consideration-list-2021-report.pdf>. Accessed 3/1/2022.

will include five attestation-based questions, each representing a separate domain of commitment. A hospital will receive a point for each domain where they attest to the corresponding statement (for a total of 5 points). At a high level, the five domains cover the following areas: (1) Strategic plan to reduce health disparities; (2) approach to collecting valid and reliable demographic and SDOH data; (3) analyses performed to assess disparities; (4) engagement in quality improvement activities;⁵⁹ and (5) leadership involvement in activities designed to reduce disparities. The specific questions asked within each domain, as well as the detailed measure specification are found in the CMS List of MUC for December 2021 at <https://www.cms.gov/files/document/measures-under-consideration-list-2021-report.pdf>. An IRF could receive a point for each domain where data are submitted through a CMS portal to reflect actions taken by the IRF for each corresponding domain (for a point total).

CMS believes this type of organizational commitment structural measure may complement the health disparities approach described in previous sections, and support IRFs in quality improvement, efficient, effective use of resources, and leveraging available data. As defined by AHRQ, structural measures aim to “give consumers a sense of a healthcare provider’s capacity, systems, and processes to provide high-quality care.”⁶⁰ We acknowledge that collection of this structural measure may impose administrative and/or reporting requirements for IRFs.

We are interested in obtaining feedback from stakeholders on conceptual and measurement priorities for the IRF QRP to better illuminate organizational commitment to health equity.

⁵⁹ Quality is defined by the National Academy of Medicine as the degree to which health services for individuals and populations increase the likelihood of desired health outcomes and are consistent with current professional knowledge. Quality improvement is the framework used to systematically improve care. Quality improvement seeks to standardize processes and structure to reduce variation, achieve predictable results, and improve outcomes for patients, healthcare systems, and organizations. Structure includes things like technology, culture, leadership, and physical capital; process includes knowledge capital (e.g., standard operating procedures) or human capital (e.g., education and training). Available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/MMS/Quality-Measure-and-Quality-Improvement->. Accessed 3/1/2022.

⁶⁰ Agency for Healthcare Research and Quality. Types of Health Care Quality Measures. 2015. Available at <https://www.ahrq.gov/talkingquality/measures/types.html>. Accessed February 3, 2022.

3. Solicitation of Public Comment

The goal of this request for information is to describe key principles and approaches that we will consider when advancing the use of quality measure development and stratification to address healthcare disparities and advance health equity across our programs.

We invite general comments on the principles and approaches described previously in this section of the rule, as well as additional thoughts about disparity measurement or stratification guidelines suitable for overarching consideration across CMS' QRP programs. Specifically, we invite comment on:

- Identification of Goals and Approaches for Measuring Healthcare Disparities and Using Measure Stratification Across CMS Quality Reporting Programs
- ++ The use of the within- and between-provider disparity methods in IRFs to present stratified measure results
- ++ The use of decomposition approaches to explain possible causes of measure performance disparities
- ++ Alternative methods to identify disparities and the drivers of disparities
- Guiding Principles for Selecting and Prioritizing Measures for Disparity Reporting
- ++ Principles to consider for prioritization of health equity measures and measures for disparity reporting, including prioritizing stratification for validated clinical quality measures, those measures with established disparities in care, measures that have adequate sample size and representation among healthcare providers and outcomes, and measures of appropriate access and care.
- Principles for Social Risk Factor and Demographic Data Selection and Use
- ++ Principles to be considered for the selection of social risk factors and demographic data for use in collecting disparity data including the importance of expanding variables used in measure stratification to consider a wide range of social risk factors, demographic variables and other markers of historic disadvantage. In the absence of patient-reported data we will consider use of administrative data, area-based indicators and imputed variables as appropriate

- Identification of Meaningful Performance Differences
- ++ Ways that meaningful difference in disparity results should be considered.
- Guiding Principles for Reporting Disparity Measures
- ++ Guiding principles for the use and application of the results of disparity measurement.
- Measures Related to Health Equity
- ++ The usefulness of a HESS score for IRFs, both in terms of provider actionability to improve health equity, and in terms of whether this information would support Care Compare website users in making informed healthcare decisions.
- ++ The potential for a structural measure assessing an IRF's commitment to health equity, the specific domains that should be captured, and options for reporting this data in a manner that would minimize burden.
- ++ Options to collect facility-level information that could be used to support the calculation of a structural measure of health equity.
- ++ Other options for measures that address health equity.

While we will not be responding to specific comments submitted in response to this RFI in the FY 2023 IRF PPS final rule, we will actively consider all input as we develop future regulatory proposals or future subregulatory policy guidance. Any updates to specific program requirements related to quality measurement and reporting provisions would be addressed through separate and future notice-and-comment rulemaking, as necessary.

F. Proposals Relating to the Form, Manner, and Timing of Data Submission Under the IRF QRP

1. Background

We refer readers to the regulatory text at § 412.634(b) for information regarding the current policies for reporting IRF QRP data.

2. Proposal To Require Quality Data Reporting on All IRF Patients Beginning With the FY 2025 IRF QRP

a. Background

We have received public input for the past 10 years on the need to standardize measurement data collection across all payers in the PAC settings. For example, as part of their recommendations on Coordination Strategy for Post-Acute Care and Long-term Care Performance

Measurement,⁶¹ the National Quality Forum (NQF)-convened Measures Application Partnership (MAP) defined priorities and core measure concepts for PAC, including IRFs, in order to improve care coordination for patients. The MAP concluded that standardized measurement data collection is needed to support the flow of information and data among PAC providers and recommended CMS collect data across all payers. Since the implementation of the Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act) and the development of the statutorily required quality measures, we have also received public input suggesting that the quality measures used in the IRF QRP should be calculated using data collected from all IRF patients, regardless of the patients' payer. This input has been provided to us through different mechanisms, including comments requested about quality measure development. Specifically, in response to the call for public comment on quality measures to satisfy the IMPACT Act domain of Transfer of Health Information and Care Preferences When an Individual Transitions,⁶² the majority of comments expressed concern over the non-standardized populations across the PAC setting and urged CMS to standardize the patient populations. One commenter stated having an all payer policy in place in some, but not all PAC settings, limits the ability of providers and consumers to interpret the information. In the FY 2018 IRF PPS proposed rule, (82 FR 20740), we sought input on expanding the quality measures to include all patients regardless of payer status. In response to the Request for Information (RFI), several commenters supported expanding the IRF QRP to include all patients regardless of payer. The Medicare Payment Advisory Committee (MedPAC) was supportive of the effort to ensure quality care for all patients, but sensitive to the issue of additional burden, while another commenter questioned whether the use of additional data would outweigh the burden of additional reporting. Other commenters were also supportive, noting that it would not be overly burdensome since most of their

⁶¹ National Quality Forum. MAP Coordination Strategy for Post-Acute Care and Long-Term Care Performance Measurement. February 2012. Available at https://www.qualityforum.org/Publications/2012/02/MAP_Coordination_Strategy_for_Post-Acute_Care_and_Long-Term_Care_Performance_Measurement.aspx. Accessed January 31, 2022.

⁶² <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/MMS/MMS-Blueprint>. Accessed January 31, 2022.

organizations' members already complete the IRF-PAI on all patients, regardless of payer status. One commenter supported the idea since collecting information on only a subset of patients could be interpreted as having provided different levels of care based on the payer.

In the FY 2020 IRF PPS Proposed Rule (84 FR 17326 to 17327), CMS proposed to expand IRF quality data reporting on all patients regardless of payer for purposes of the IRF QRP. In the FY 2020 IRF PPS final rule (84 FR 39161 through 39163), we decided not to finalize the proposal at the time, but rather use the comments to help inform a future all payer proposal.

b. Support for Expanding Quality Reporting Data on All IRF Patients

Currently, IRF-PAI assessment data are collected on patients admitted under the Medicare Part A fee-for-service (FFS) and Medicare Part C benefits.⁶³

The concept of requiring quality data reporting on all patients regardless of payer is not new; as part of the Long-Term Care Hospital (LTCH) quality reporting program, CMS currently collects quality data on all patients regardless of payer. CMS also collects quality data on all Hospice patients for the Hospice Quality Reporting Program (HQRP) regardless of payer. Eligible clinicians participating in the Merit-based Incentive Payment System (MIPS) who submit quality measure data on Qualified Clinical Data Registry (QCDR) measures, MIPS clinical quality measures (CQMs) or electronic clinical quality measures (eCQMs) must submit such data on a specified percentage of patients regardless of payer. Collecting such quality data on all patients in the IRF setting would provide the most robust and accurate representation of quality in the IRFs since CMS does not have access to other payer claims. Additionally, the data would promote higher quality and more efficient health care for Medicare beneficiaries and all patients through the exchange of information and longitudinal analysis of that data.

We believe that data reporting on standardized patient assessment data elements using the IRF-PAI should include all IRF patients for the same reasons we believe that collecting data on Medicare beneficiaries for the IRF QRP's quality measures is important: To achieve equity in healthcare outcomes

⁶³ In the FY 2010 IRF PPS final rule (74 FR 39798 through 39800), CMS revised the regulation text in §§ 412.604, 412.606, 412.610, 412.614, and 412.618 to require that all IRFs submit IRF-PAI data on all of their Medicare Part C patients.

for our beneficiaries by supporting providers in quality improvement activities, enabling them to make more informed decisions, and promoting provider accountability for healthcare disparities.^{64 65} We believe that we have authority to collect all payer data for the IRF QRP under section 1886(j)(7) of the Act. We believe it is necessary to obtain admission and discharge assessment information on all patients admitted to IRFs in order to obtain full and complete data regarding the quality of care provided by the IRF to the Medicare patients receiving care in that facility. We note, however that this data would not be used by CMS for purposes of updating the IRF PPS payment rates annually. In addition, we note that section 1886(j)(7) of the Act does not limit the Secretary to collecting data only on individuals with Medicare, and therefore this proposal is not inconsistent with CMS' statutory obligations.

We take the appropriate access to care in IRFs very seriously, and routinely monitor the QRP measures' performance, including performance gaps across IRFs. We intend to monitor closely whether any proposed change to the IRF QRP has unintended consequences on access to care for high risk patients. Should we find any unintended consequences, we will take appropriate steps to address these issues in future rulemaking. Expanding the reporting of quality measures to include all patients, regardless of payer, would ensure that the IRF QRP makes publicly available information regarding the quality of services furnished to the IRF population as a whole, rather than limiting it to only those patients with Medicare fee-for service or Medicare Advantage benefits.

We also take the privacy and security of protected health information (PHI) very seriously. Our systems conform to all applicable Federal laws and regulations as well as Federal government, HHS, and CMS policies and standards as they relate to information security and data privacy. The system limits data access to authorized users and monitors such users to ensure against unauthorized data access or disclosures.

⁶⁴ <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/Downloads/CMS-Quality-Strategy.pdf>.

⁶⁵ Report to Congress: Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014 Strategic Plan for Accessing Race and Ethnicity Data. January 5, 2017. Available at <https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Research-Reports-2017-Report-to-Congress-IMPACT-ACT-of-2014.pdf>.

While we appreciate that collecting quality data on all patients regardless of payer may create additional burden, we also note that this burden may be partially offset by eliminating the effort to separate out Medicare beneficiaries from other patients, which is also burdensome. We also acknowledge the concerns raised by some stakeholders in the past with respect to the administrative challenges of implementing all payer data collection and the need to account for the burden related to this proposal. In section XI.B. of this proposed rule, we have provided an estimate of additional burden related to this proposal.

c. Proposal To Require Quality Data Reporting on All IRF Patients

In order to facilitate and ensure that high quality care is delivered to all patients, including Medicare beneficiaries, in the IRF setting, we are proposing to require that the IRF-PAI assessment be collected on each patient receiving care in an IRF, regardless of payer, beginning with the FY 2025 IRF QRP. If finalized as proposed, IRFs would be required to report these data with respect to admission and discharge for all patients, regardless of payer, discharged between October 1, 2023 and December 31, 2023. This data would be used (in addition to the data collected January 1, 2023 through September 30, 2023) to calculate an IRF's data completion threshold for the FY 2025 IRF QRP.

If finalized as proposed, we would revise the IRF-PAI in order for IRFs to submit data pursuant to the finalized policy. A new item would replace the current item identifying payment source on the IRF-PAI admission assessment to collect additional payer(s) information. The collection of this item would align with the LTCH setting. A draft IRF PAI containing this new item will be available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting>. We will notify stakeholders when the draft IRF PAI is available.

We invite public comments on this proposal.

3. Proposed Revisions to the Regulation Text To Require IRFs To Submit Patient Assessments on All Patients Beginning With the FY 2025 IRF QRP

As discussed in section X.F.2 of this proposed rule, we are proposing to require that the IRF-PAI assessment be collected on each patient receiving care in an IRF, regardless of payer. Therefore, we also propose, subject to the aforementioned proposal becoming final, to revise the regulation text in

§§ 412.604, 412.606, 412.610, 412.614, and 412.618 so that the requirements that IRFs must currently satisfy with respect to collection and submission of IRF-PAI data for Medicare Part A and Medicare Part C patients would also apply to data on all other IRF patients, regardless of payer.

In addition, we note that CMS' regulations at § 412.610(f) currently require IRFs to maintain all PAIs completed on Medicare Part A fee-for-service patients within the previous 5 years and Medicare Part C (Medicare Advantage) patients within the previous 10 years either in a paper format in the patient's clinical record or in an electronic computer file format that the IRF can easily obtain and produce upon request to CMS or its contractors. Subject to the aforementioned all-payer proposal becoming final, we are therefore also proposing to revise the regulation text at § 410.610(f) to require that IRFs maintain PAIs completed on patients receiving care under all other payer sources (that is, other than Medicare Part A and Medicare Part C) for 5 years. We are proposing a 5-year period for the same reasons we proposed a 5-year requirement for Medicare Part A patients in the original Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities final rule that appeared in the August 7, 2001 **Federal Register** (66 FR 41329). Specifically, the assessments may be needed as part of a retrospective review conducted at the IRF for various purposes, including the fact that the completed patient assessments could be beneficial to other entities that appropriately have access to these records (for example, a State or Federal agency conducting an investigation due to a complaint of patient abuse).

The proposed revisions are outlined in §§ 412.604, 412.606, 412.610, 412.614, and 412.618 in the regulation text of this proposed rule. We invite public comments on this proposal.

4. Proposed Revisions to § 412.614(d)(2) To Correct an Error to the Regulatory Text

In accordance with the Administrative Procedure Act, 5 U.S.C. 553, it is the Secretary's practice to offer interested parties the opportunity to comment on proposed regulations.

However, the regulatory changes in this proposal are necessary to correct an error and do not establish any new substantive rules.

We are proposing to revise the regulatory text at § 412.614(d)(2) to correct a reference to another part of the regulations. Specifically, we are replacing a reference to § 412.23(b)(2) with the correct reference to § 412.29(b)(1). The proposed revisions are outlined in the regulation text of this proposed rule.

We invite public comments on this proposal.

G. Policies Regarding Public Display of Measure Data for the IRF QRP

We are not proposing any new policies regarding the public display of measure data at this time.

XI. Collection of Information Requirements

A. Statutory Requirement for Solicitation of Comments

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

This proposed rule makes reference to associated information collections that are not discussed in the regulation text contained in this document.

B. Collection of Information Requirements for Updates Related to the IRF QRP Beginning With the FY 2025 IRF QRP

An IRF that does not meet the requirements of the IRF QRP for a fiscal

year will receive a 2-percentage point reduction to its otherwise applicable annual increase factor for that fiscal year.

We believe that the burden associated with the IRF QRP is the time and effort associated with complying with the requirements of the IRF QRP. In section X.F.2. of this proposed rule, we are proposing to update the data reporting requirements for the IRF QRP beginning with the FY 2025 IRF QRP. We are proposing to require IRFs to collect IRF-PAI assessment information on each patient receiving care in an IRF, regardless of payer. We believe the IRF-PAI items are completed by Registered Nurses (RN), Licensed Practical and Licensed Vocational Nurses (LVN), Respiratory Therapists (RT), Speech-Language Pathologists (SLP), Occupational Therapists (OT), Physical Therapists (PT), and/or Psychologists (Psy), depending on the item. We identified the staff type per item based on past IRF burden calculations in conjunction with expert opinion. Our assumptions for staff type were based on the categories generally necessary to perform an assessment. Individual providers determine the staffing resources necessary; therefore, we averaged the national average for these labor types and established a composite cost estimate. This composite estimate was calculated by weighting each salary based on the following breakdown regarding provider types most likely to collect this data: RN 50 percent; LVN 31.7 percent; RT 7 percent; SLP 6 percent; PT 2.5 percent; OT 2.5 percent; Psy 2 percent. For the purposes of calculating the costs associated with the collection of information requirements, we obtained mean hourly wages for these staff from the U.S. Bureau of Labor Statistics' May 2020 National Occupational Employment and Wage Estimates.⁶⁶ To account for overhead and fringe benefits, we have doubled the hourly wage. These amounts are detailed in Table 13.

⁶⁶ https://www.bls.gov/oes/current/oes_nat.htm.

TABLE 13: U.S. Bureau of Labor and Statistics' May 2020 National Occupational Employment and Wage Estimates

Occupation title	Occupation code	Mean Hourly Wage (\$/hr)	Overhead and Fringe Benefit (\$/hr)	Adjusted Hourly Wage (\$/hr)
Registered Nurse (RN)	29-1141	\$38.47	\$38.47	\$76.94
Licensed Vocational Nurse (LVN)	29-2061	\$24.08	\$24.08	\$48.16
Respiratory Therapist (RT)	29-1126	\$31.56	\$31.56	\$63.12
Speech Language Pathologist (SLP)	29-1127	\$40.02	\$40.02	\$80.04
Physical Therapist (PT)	29-1123	\$44.08	\$44.08	\$88.16
Occupational Therapist (OT)	29-1122	\$42.06	\$42.06	\$84.12
Psychologist (Psy)	19-3030	\$43.61	\$43.61	\$87.22

As a result of this proposal, the estimated burden and cost for IRFs for complying with requirements of the FY 2025 IRF QRP will increase. Specifically, we believe that there will be a 1.8 hours addition in clinical staff time to report data for each additional IRF-PAI completed. We estimate the collection of an additional 263,988 IRF-PAIs from 1,115 IRFs annually. This equates to an increase of 475,178 hours in burden for all IRFs (1.8 hours \times 263,988 discharges). Given the clinician times estimated in the previous paragraph and the wages in Table 13, we calculated a blended hourly rate of \$66.82. We estimate that each IRF will complete an average of 237 additional IRF-PAIs per year, the total cost related to the additional reporting requirements is estimated at \$28,505.41 per IRF annually [(237 assessment \times 1.8 hours) \times \$66.82], or \$31,783,532.15 for all IRFs annually (\$28,505.41 \times 1,115). The increase in burden will be accounted for in a revised information collection request under OMB control number (0938-0842). The required 60-day and 30-day notices will publish in the **Federal Register** and the comment periods will be separate from those associated with this rulemaking. A 60-day **Federal Register** notice was published on February 3, 2022 (87 FR 6175) to extend the information collection request. The 60-day comment period for the extension ends April 4, 2022. The revision will be submitted at the conclusion of the extension process.

As described in section X.F.2.c. of this proposed rule, a new item would replace Item 20 on the IRF-PAI V4.0. However, since this item is replacing another item already accounted for in the PRA, we do not believe this would

add any additional burden to the estimate described above.

C. Submission of PRA-Related Comments

We have submitted a copy of this rule's information collection and recordkeeping requirements to OMB for review and approval. These requirements are not effective until they have been approved by the OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections discussed above, please visit CMS' website at www.cms.hhs.gov/PaperworkReductionActof1995, or call the Reports Clearance Office at 410-786-1326.

We invite public comments on these potential information collection requirements. If you wish to comment, please refer to the **DATES** and **ADDRESSES** sections of this rulemaking for instructions. We will consider all ICR-related comments received by the date and time specified in the **DATES** section, and when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

XII. Response to Comments

Because of the large number of public comments, we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

XIII. Regulatory Impact Analysis

A. Statement of Need

This proposed rule would update the IRF prospective payment rates for FY 2023 as required under section 1886(j)(3)(C) of the Act and in accordance with section 1886(j)(5) of the Act, which requires the Secretary to publish in the **Federal Register** on or before August 1 before each FY, the classification and weighting factors for CMGs used under the IRF PPS for such FY and a description of the methodology and data used in computing the prospective payment rates under the IRF PPS for that FY. This proposed rule would also implement section 1886(j)(3)(C) of the Act, which requires the Secretary to apply a productivity adjustment to the market basket increase factor for FY 2012 and subsequent years.

Furthermore, this proposed rule would adopt policy changes under the statutory discretion afforded to the Secretary under section 1886(j) of the Act. We are proposing to update the data reporting requirements for the IRF QRP and to amend the regulations consistent with the proposed requirements. We are also proposing to correct an error in the regulations text at § 412.614(d)(2). Finally, we are seeking comment on three issues: (1) Future measure concepts under consideration for the IRF QRP; (2) the potential future inclusion of the National Healthcare Safety Network (NHSN) Healthcare associated *Clostridioides difficile* Infection Outcome measure in the IRF QRP; and (3) overarching principles for measuring equity and health disparities across

CMS Quality Programs, including the IRF QRP.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Order 12866.

Section (6)(a) of Executive Order 12866 provides that a regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). We estimate the total impact of the policy updates described in this proposed rule by comparing the estimated payments in FY 2023 with those in FY 2022. This analysis results in an estimated \$170 million increase for FY 2023 IRF PPS payments. Additionally, we estimate that costs associated with the proposal to update the reporting requirements under the IRF QRP result in an estimated \$31,783,532.15 additional cost in FY

2025 for IRFs. Based on our estimates OMB’s Office of Information and Regulatory Affairs has determined that this rulemaking is “economically significant” as measured by the \$100 million threshold. Also, the rule has been reviewed by OMB. Accordingly, we have prepared an RIA that, to the best of our ability, presents the costs and benefits of the rulemaking.

C. Anticipated Effects

1. Effects on IRFs

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IRFs and most other providers and suppliers are small entities, either by having revenues of \$8.0 million to \$41.5 million or less in any 1 year depending on industry classification, or by being nonprofit organizations that are not dominant in their markets. (For details, see the Small Business Administration’s final rule that set forth size standards for health care industries, at 65 FR 69432 at https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%202019%2C%202019_Rev.pdf, effective January 1, 2017 and updated on August 19, 2019.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs or the proportion of IRFs’ revenue that is derived from Medicare payments. Therefore, we assume that all IRFs (an approximate total of 1,115 IRFs, of which approximately 52 percent are nonprofit facilities) are considered small entities and that Medicare payment constitutes the majority of their revenues. HHS generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. As shown in Table 14, we estimate that the net revenue impact of this proposed rule on all IRFs is to increase estimated payments by approximately 2.0 percent. The rates and policies set forth in this proposed rule would not have a significant impact (not greater than 3 percent) on a substantial number of small entities. The estimated impact on small entities is shown in Table 14. MACs are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the

operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As shown in Table 14, we estimate that the net revenue impact of this proposed rule on rural IRFs is to increase estimated payments by approximately 1.8 percent based on the data of the 133 rural units and 12 rural hospitals in our database of 1,115 IRFs for which data were available. We estimate an overall impact for rural IRFs in all areas between –1.8 percent and 2.9 percent. As a result, we anticipate that this proposed rule would not have a significant impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–04, enacted on March 22, 1995) (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2022, that threshold is approximately \$165 million. This proposed rule does not mandate any requirements for State, local, or tribal governments, or for the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. As stated, this proposed rule would not have a substantial effect on State and local governments, preempt State law, or otherwise have a federalism implication.

2. Detailed Economic Analysis

This proposed rule would update the IRF PPS rates contained in the FY 2022 IRF PPS final rule (86 FR 42362). Specifically, this proposed rule would update the CMG relative weights and ALOS values, the wage index, and the outlier threshold for high-cost cases. This proposed rule would apply a productivity adjustment to the FY 2023 IRF market basket increase factor in accordance with section 1886(j)(3)(C)(ii)(I) of the Act. Further, this proposed rule would codify CMS’ existing teaching status adjustment policy through proposed amendments to the regulation text and would update and clarify the IRF teaching policy with respect to IRF hospital closures and

displaced residents. Additionally, this proposed rule would establish a permanent cap policy to smooth the impact of year-to-year changes in IRF payments related to changes in the IRF wage index.

We estimate that the impact of the changes and updates described in this proposed rule would be a net estimated increase of \$170 million in payments to IRF providers. The impact analysis in Table 14 of this proposed rule represents the projected effects of the updates to IRF PPS payments for FY 2023 compared with the estimated IRF PPS payments in FY 2022. We determine the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as number of discharges or case-mix.

We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors because of other changes in the forecasted impact time period. Some examples could be legislative changes made by the Congress to the Medicare program that would impact program funding, or changes specifically related to IRFs. Although some of these changes may not necessarily be specific to the IRF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon IRFs.

In updating the rates for FY 2023, we are proposing standard annual revisions described in this proposed rule (for example, the update to the wage index and market basket increase factor used to adjust the Federal rates). We are also reducing the FY 2023 IRF market basket increase factor by a productivity adjustment in accordance with section 1886(j)(3)(C)(ii)(I) of the Act. We estimate the total increase in payments to IRFs in FY 2023, relative to FY 2022, would be approximately \$170 million.

This estimate is derived from the application of the FY 2023 IRF market basket increase factor, as reduced by a productivity adjustment in accordance with section 1886(j)(3)(C)(ii)(I) of the Act, which yields an estimated increase in aggregate payments to IRFs of \$240 million. However, there is an estimated \$70 million decrease in aggregate payments to IRFs due to the proposed update to the outlier threshold amount. Therefore, we estimate that these

updates would result in a net increase in estimated payments of \$170 million from FY 2022 to FY 2023.

The effects of the proposed updates that impact IRF PPS payment rates are shown in Table 14. The following proposed updates that affect the IRF PPS payment rates are discussed separately below:

- The effects of the proposed update to the outlier threshold amount, from approximately 3.8 percent to 3.0 percent of total estimated payments for FY 2023, consistent with section 1886(j)(4) of the Act.
- The effects of the proposed annual market basket update (using the IRF market basket) to IRF PPS payment rates, as required by sections 1886(j)(3)(A)(i) and (j)(3)(C) of the Act, including a productivity adjustment in accordance with section 1886(j)(3)(C)(i)(I) of the Act.
- The effects of applying the proposed budget-neutral labor-related share and wage index adjustment, as required under section 1886(j)(6) of the Act.
- The effects of applying the proposed budget-neutral permanent cap on wage index decreases policy.
- The effects of the proposed budget-neutral changes to the CMG relative weights and ALOS values under the authority of section 1886(j)(2)(C)(i) of the Act.
- The total change in estimated payments based on the FY 2023 payment changes relative to the estimated FY 2022 payments.

3. Description of Table 14

Table 14 shows the overall impact on the 1,115 IRFs included in the analysis.

The next 12 rows of Table 14 contain IRFs categorized according to their geographic location, designation as either a freestanding hospital or a unit of a hospital, and by type of ownership; all urban, which is further divided into urban units of a hospital, urban freestanding hospitals, and by type of ownership; and all rural, which is further divided into rural units of a hospital, rural freestanding hospitals, and by type of ownership. There are 970 IRFs located in urban areas included in our analysis. Among these, there are 653 IRF units of hospitals located in urban areas and 317 freestanding IRF hospitals located in urban areas. There are 145 IRFs located in rural areas included in our analysis. Among these, there are 133 IRF units of hospitals located in rural areas and 12 freestanding IRF hospitals located in rural areas. There are 431 for-profit IRFs. Among these, there are 396 IRFs in urban areas and 35 IRFs in rural areas. There are 577 non-profit IRFs.

Among these, there are 489 urban IRFs and 88 rural IRFs. There are 107 government-owned IRFs. Among these, there are 85 urban IRFs and 22 rural IRFs.

The remaining four parts of Table 14 show IRFs grouped by their geographic location within a region, by teaching status, and by DSH patient percentage (PP). First, IRFs located in urban areas are categorized for their location within a particular one of the nine Census geographic regions. Second, IRFs located in rural areas are categorized for their location within a particular one of the nine Census geographic regions. In some cases, especially for rural IRFs located in the New England, Mountain, and Pacific regions, the number of IRFs represented is small. IRFs are then grouped by teaching status, including non-teaching IRFs, IRFs with an intern and resident to average daily census (ADC) ratio less than 10 percent, IRFs with an intern and resident to ADC ratio greater than or equal to 10 percent and less than or equal to 19 percent, and IRFs with an intern and resident to ADC ratio greater than 19 percent. Finally, IRFs are grouped by DSH PP, including IRFs with zero DSH PP, IRFs with a DSH PP less than 5 percent, IRFs with a DSH PP between 5 and less than 10 percent, IRFs with a DSH PP between 10 and 20 percent, and IRFs with a DSH PP greater than 20 percent.

The estimated impacts of each policy described in this rule to the facility categories listed are shown in the columns of Table 14. The description of each column is as follows:

- Column (1) shows the facility classification categories.
- Column (2) shows the number of IRFs in each category in our FY 2023 analysis file.
- Column (3) shows the number of cases in each category in our FY 2023 analysis file.
- Column (4) shows the estimated effect of the proposed adjustment to the outlier threshold amount.
- Column (5) shows the estimated effect of the proposed update to the IRF labor-related share and wage index, in a budget-neutral manner.
- Column (6) shows the estimated effect of the proposed permanent cap on wage index decreases policy, in a budget-neutral manner.
- Column (7) shows the estimated effect of the proposed update to the CMG relative weights and ALOS values, in a budget-neutral manner.
- Column (8) compares our estimates of the payments per discharge, incorporating all of the policies reflected in this proposed rule for FY

2023 to our estimates of payments per discharge in FY 2022.

The average estimated increase for all IRFs is approximately 2.0 percent. This estimated net increase includes the effects of the proposed IRF market basket increase factor for FY 2023 of 2.8 percent, which is based on a proposed IRF market basket update of 3.2 percent,

less a 0.4 percentage point productivity adjustment, as required by section 1886(j)(3)(C)(ii)(I) of the Act. It also includes the approximate 0.8 percent overall decrease in estimated IRF outlier payments from the proposed update to the outlier threshold amount. Since we are making the updates to the IRF wage index, labor-related share and the CMG

relative weights in a budget-neutral manner, they will not be expected to affect total estimated IRF payments in the aggregate. However, as described in more detail in each section, they will be expected to affect the estimated distribution of payments among providers.

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TABLE 14: IRF Impact Table for FY 2023 (Columns 4 through 8 in percentage)

Facility Classification	Number of IRFs	Number of Cases	Outlier	Wage Index FY23	Proposed Permanent Wage Index Decreases Cap	CMG Weights	Total Percent Change ¹
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Total	1,115	380,165	-0.8	0.0	0.0	0.0	2.0
Urban unit	653	143,947	-1.4	0.0	0.0	-0.1	1.2
Rural unit	133	17,660	-1.0	-0.1	0.0	-0.1	1.5
Urban hospital	317	213,377	-0.3	0.0	0.0	0.1	2.6
Rural hospital	12	5,181	-0.3	-0.2	0.0	0.2	2.5
Urban For-Profit	396	206,158	-0.3	0.0	0.0	0.1	2.6
Rural For-Profit	35	8,048	-0.4	-0.1	0.0	0.1	2.4
Urban Non-Profit	489	132,251	-1.3	0.0	0.0	-0.1	1.4
Rural Non-Profit	88	12,252	-1.1	-0.2	0.0	-0.1	1.4
Urban Government	85	18,915	-1.6	-0.1	0.0	-0.2	0.9
Rural Government	22	2,541	-0.9	-0.2	0.0	-0.1	1.6
Urban	970	357,324	-0.8	0.0	0.0	0.0	2.0
Rural	145	22,841	-0.8	-0.2	0.0	0.0	1.8
Urban by region							
Urban New England	29	13,576	-0.5	-1.1	0.0	-0.1	1.1
Urban Middle Atlantic	121	41,622	-1.2	0.2	0.0	0.0	1.8
Urban South Atlantic	158	75,753	-0.6	-0.2	0.0	0.0	1.9
Urban East North Central	158	44,520	-0.8	-0.1	0.0	-0.1	1.8
Urban East South Central	55	25,224	-0.2	-0.3	0.0	0.0	2.3
Urban West North Central	76	21,675	-0.7	-0.5	0.0	-0.1	1.4
Urban West South Central	197	83,013	-0.5	0.2	0.0	0.2	2.7
Urban Mountain	79	27,597	-0.6	0.3	0.0	0.0	2.5
Urban Pacific	97	24,344	-1.7	0.5	0.0	-0.2	1.3
Rural by region							
Rural New England	5	1,116	-0.9	1.2	0.0	-0.2	2.9
Rural Middle Atlantic	10	926	-1.1	-0.3	0.0	0.0	1.3

Facility Classification	Number of IRFs	Number of Cases	Outlier	Wage Index FY23	Proposed Permanent Wage Index Decreases Cap	CMG Weights	Total Percent Change ¹
Rural South Atlantic	16	4,000	-0.2	-0.7	0.0	0.1	1.9
Rural East North Central	23	3,379	-0.8	-0.8	0.0	-0.1	1.0
Rural East South Central	20	3,626	-0.5	-0.4	0.0	-0.1	1.7
Rural West North Central	20	2,579	-1.4	0.1	0.0	0.0	1.5
Rural West South Central	42	6,514	-0.8	0.4	0.0	0.1	2.4
Rural Mountain	6	379	-1.2	-0.5	0.1	0.1	1.2
Rural Pacific	3	322	-3.9	-0.3	0.0	-0.3	-1.8
Teaching status							
Non-teaching	1,012	335,417	-0.7	0.0	0.0	0.0	2.1
Resident to ADC less than 10%	59	32,213	-1.0	0.0	0.0	-0.1	1.7
Resident to ADC 10%-19%	34	11,327	-1.6	0.1	0.0	-0.2	1.0
Resident to ADC greater than 19%	10	1,208	-1.1	0.5	0.0	-0.1	2.1
Disproportionate share patient percentage (DSH PP)							
DSH PP = 0%	64	11,557	-1.5	0.2	0.0	0.0	1.5
DSH PP <5%	127	49,049	-0.6	-0.2	0.0	0.1	2.0
DSH PP 5%-10%	260	105,962	-0.6	0.1	0.0	0.1	2.4
DSH PP 10%-20%	388	140,935	-0.7	0.0	0.0	0.0	2.0
DSH PP greater than 20%	276	72,662	-1.2	0.1	0.0	-0.1	1.6

¹This column includes the impact of the updates in columns (4), (5), (6) and (7) above, and of the IRF market basket update for FY 2023 (3.2 percent), reduced by 0.4 percentage point for the productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act. Note, the products of these impacts may be different from the percentage changes shown here due to rounding effects.

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4. Impact of the Proposed Update to the Outlier Threshold Amount

The estimated effects of the proposed update to the outlier threshold adjustment are presented in column 4 of Table 14.

For this proposed rule, we are using preliminary FY 2021 IRF claims data, and, based on that preliminary analysis, we estimated that IRF outlier payments as a percentage of total estimated IRF

payments would be 3.8 percent in FY 2023. Thus, we propose to adjust the outlier threshold amount in this proposed rule to maintain total estimated outlier payments equal to 3 percent of total estimated payments in FY 2023. The estimated change in total IRF payments for FY 2023, therefore, includes an approximate 0.8 percentage point decrease in payments because the estimated outlier portion of total payments is estimated to decrease from approximately 3.8 percent to 3 percent.

The impact of this proposed outlier adjustment update (as shown in column 4 of Table 14) is to decrease estimated overall payments to IRFs by 0.8 percentage point.

5. Impact of the Proposed Wage Index and Labor-Related Share

In column 5 of Table 14, we present the effects of the proposed budget-neutral update of the wage index and labor-related share. The proposed changes to the wage index and the

labor-related share are discussed together because the wage index is applied to the labor-related share portion of payments, so the proposed changes in the two have a combined effect on payments to providers. As discussed in section V.C. of this proposed rule, we are proposing to update the labor-related share from 72.9 percent in FY 2022 to 73.2 percent in FY 2023. In aggregate, we do not estimate that these proposed updates will affect overall estimated payments to IRFs. However, we do expect these updates to have small distributional effects.

6. Impact of the Proposed Wage Index Policy

In column 6 of Table 14, we present the effects of the budget-neutral proposed permanent cap on wage index decreases policy. As discussed in section V.D.3 of this proposed rule, we are proposing to apply a permanent 5-percent cap on any decrease to a provider's wage index from its wage index in the prior year to smooth the impact of year-to-year changes in IRF payments related to changes in the IRF wage index. We are required by section 1886(j)(6) of the Act, to implement changes to the wage index in a budget-neutral manner. Thus, there will not be an impact on aggregate Medicare payments to IRFs.

7. Impact of the Proposed Update to the CMG Relative Weights and ALOS Values

In column 7 of Table 14, we present the effects of the proposed budget-neutral update of the CMG relative weights and ALOS values. In the aggregate, we do not estimate that these proposed updates will affect overall estimated payments of IRFs. However, we do expect these updates to have small distributional effects.

8. Effects of Proposed Codification and Clarifications of IRF Teaching Status Adjustment Policy

As discussed in section VII. of this proposed rule, we are proposing to codify the longstanding teaching status adjustment policy through the proposed amendments to the regulation text at § 412.602 and § 412.624(e)(4) provided in this proposed rule.

We do not anticipate a financial impact associated with the proposed codification of the IRF teaching status adjustment policies. However, the clarification of certain teaching status adjustment policies and proposed codification of these policies will enable us to align the IRF policies with recent updates to the IPPS and IPF teaching

status adjustment policies. Aligning the policy guidance with other post-acute care setting regulations will also assist stakeholders in providing care for Medicare beneficiaries.

9. Effects of Requirements for the IRF QRP for FY 2025

In accordance with section 1886(j)(7)(A) of the Act, the Secretary must reduce by 2 percentage points the annual market basket increase factor otherwise applicable to an IRF for a fiscal year if the IRF does not comply with the requirements of the IRF QRP for that fiscal year. In section X.A. of this proposed rule, we discuss the method for applying the 2 percentage point reduction to IRFs that fail to meet the IRF QRP requirements.

As discussed in section X.F.2. of this proposed rule, we are proposing to require the reporting of quality data on all patients discharged from the IRF beginning with the FY 2025 IRF QRP. We describe the estimated burden for this proposal in section XI.B. of this proposed rule. In summary, the proposed changes to the IRF QRP will result in a burden addition of \$28,505.41 per IRF annually, or \$31,783,532.15 for all IRFs annually beginning with the FY 2025 IRF QRP. We note, however, that this estimate may be partially offset by eliminating the effort to separate out Medicare beneficiaries from other patients.

D. Alternatives Considered

The following is a discussion of the alternatives considered for the IRF PPS updates contained in this proposed rule.

Section 1886(j)(3)(C) of the Act requires the Secretary to update the IRF PPS payment rates by an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services.

As noted previously in this proposed rule, section 1886(j)(3)(C)(ii)(I) of the Act requires the Secretary to apply a productivity adjustment to the market basket increase factor for FY 2023. Thus, in accordance with section 1886(j)(3)(C) of the Act, we propose to update the IRF prospective payments in this proposed rule by 2.8 percent (which equals the 3.2 percent estimated IRF market basket increase factor for FY 2023 reduced by a 0.4 percentage point productivity adjustment as determined under section 1886(b)(3)(B)(xi)(II) of the Act (as required by section 1886(j)(3)(C)(ii)(I) of the Act)).

We considered maintaining the existing CMG relative weights and average length of stay values for FY 2023. However, in light of recently

available data and our desire to ensure that the CMG relative weights and average length of stay values are as reflective as possible of recent changes in IRF utilization and case mix, we believe that it is appropriate to propose to update the CMG relative weights and average length of stay values at this time to ensure that IRF PPS payments continue to reflect as accurately as possible the current costs of care in IRFs.

We considered maintaining the existing outlier threshold amount for FY 2022. However, analysis of updated FY 2021 data indicates that estimated outlier payments would be more than 3 percent of total estimated payments for FY 2023, by approximately 0.8 percent, unless we updated the outlier threshold amount. Consequently, we propose adjusting the outlier threshold amount in this proposed rule to reflect a 0.8 percent decrease thereby setting the total outlier payments equal to 3 percent, instead of 3.8 percent, of aggregate estimated payments in FY 2023.

We considered not amending § 412.602 and § 412.624(e)(4) to codify our longstanding guidance on the teaching status adjustment policies and update the IRF teaching policy on IRF program closures and displaced residents. However, we believe that codifying these longstanding policies into regulation text would improve clarity and reduce administrative burden on IRF providers trying to locate all relevant information regarding the teaching status adjustment. Additionally, we believe that we should streamline all teaching status adjustment policy information in the same place for ease of reference.

E. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on the FY 2023 IRF PPS proposed rule will be the number of reviewers of last year's proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this proposed rule. It is possible that not all commenters reviewed the FY 2022 IRF PPS proposed rule in detail, and it is also possible that some reviewers chose not to comment on the FY 2022 proposed rule. For these reasons, we thought that the number of commenters would be a fair estimate of

the number of reviewers of this proposed rule.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule, and therefore, for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule. We seek comments on this assumption.

Using the national mean hourly wage data from the May 2020 BLS for Occupational Employment Statistics (OES) for medical and health service managers (SOC 11–9111), we estimate that the cost of reviewing this rule is

\$114.24 per hour, including overhead and fringe benefits (https://www.bls.gov/oes/current/oes_nat.htm). Assuming an average reading speed, we estimate that it would take approximately 3 hours for the staff to review half of this proposed rule. For each reviewer of the rule, the estimated cost is \$342.72 (3 hours × \$114.24). Therefore, we estimate that the total cost of reviewing this regulation is \$17,478.72 (\$342.72 × (50 reviewers)).

F. Accounting Statement and Table

As required by OMB Circular A–4 (available at [https://](https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf)

www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf), in Table 15 we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. Table 15 provides our best estimate of the increase in Medicare payments under the IRF PPS as a result of the proposed updates presented in this proposed rule based on the data for 1,115 IRFs in our database.

TABLE 15: Accounting Statement: Classification of Estimated Expenditure

	Category	Transfers
Change in Estimated Transfers from FY 2022 IRF PPS to FY 2023 IRF PPS	Annualized Monetized Transfers	\$170 million
	From Whom to Whom?	Federal Government to IRF Medicare Providers
Estimated Costs for the FY 2025 IRF QRP	Annualized monetized cost in FY 2025 for IRFs due to new quality reporting program requirements	\$31,783,532.15
Estimated Costs Associated with Review Cost for FY 2023 IRF PPS	Cost associated with regulatory review cost	\$17,478.72

G. Conclusion

Overall, the estimated payments per discharge for IRFs in FY 2023 are projected to increase by 2.0 percent, compared with the estimated payments in FY 2022, as reflected in column 8 of Table 14.

IRF payments per discharge are estimated to increase by 2.0 percent in urban areas and 1.8 percent in rural areas, compared with estimated FY 2022 payments. Payments per discharge to rehabilitation units are estimated to increase 1.2 percent in urban areas and 1.5 percent in rural areas. Payments per discharge to freestanding rehabilitation hospitals are estimated to increase 2.6 percent in urban areas and increase 2.5 percent in rural areas.

Overall, IRFs are estimated to experience a net increase in payments as a result of the proposed policies in this proposed rule. The largest payment increase is estimated to be a 2.9 percent increase for rural IRFs located in the rural New England region. The analysis above, together with the remainder of this preamble, provides an RIA.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by OMB.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on March 22, 2022.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for part 412 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 2. Amend § 412.602 by adding the definitions of “Closure of an IRF”, “Closure of an IRF’s residency training program”, and “Displaced resident” in alphabetical order to read as follows:

§ 412.602 Definitions.

Closure of an IRF has the same meaning as “closure of a hospital” as defined in § 413.79(h)(1)(i) as applied to an IRF meeting the requirements of § 412.604(b) for the purposes of accounting for indirect teaching costs.

Closure of an IRF’s residency training program has the same meaning as “closure of a hospital residency training program” as defined in § 413.79(h)(1)(ii) as applied to an IRF meeting the requirements of § 412.604(b) for the

purposes of accounting for indirect teaching costs.

* * * * *

Displaced resident has the same meaning as a “displaced resident” as defined in § 413.79(h)(1)(iii) as applied to an IRF, for purposes of accounting for indirect teaching costs.

* * * * *

■ 3. Amend § 412.604 by revising paragraph (c) to read as follows:

§ 412.604 Conditions for payment under the prospective payment system for inpatient rehabilitation facilities.

* * * * *

(c) *Completion of patient assessment instrument.* For each Medicare part A fee-for-service patient admitted to or discharged from an IRF on or after January 1, 2002, the inpatient rehabilitation facility must complete a patient assessment instrument in accordance with § 412.606. IRFs must also complete a patient assessment instrument in accordance with § 412.606 for each Medicare Part C (Medicare Advantage) patient admitted to or discharged from an IRF on or after October 1, 2009. In addition, IRFs must complete a patient assessment instrument in accordance with § 412.606 for all other patients, regardless of payer, admitted to or discharged from an IRF on or after October 1, 2023.

* * * * *

■ 4. Amend § 412.606 by—

■ a. Revising paragraphs (a) and (b)(1) to read as follows:

§ 412.606 Patient assessments.

(a) *Patient assessment instrument.* An inpatient rehabilitation facility must use the CMS inpatient rehabilitation facility patient assessment instrument to assess Medicare Part A fee-for-service and Medicare Part C (Medicare Advantage) inpatients who are admitted on or after January 1, 2002, or were admitted before January 1, 2002, and are still inpatients as of January 1, 2002.

(1) Starting on October 1, 2023, inpatient rehabilitation facilities must use the CMS inpatient rehabilitation facility patient assessment instrument to assess all inpatients, regardless of payer, who are admitted on or after October 1, 2023, or who were admitted before October 1, 2023 and are still inpatients as of October 1, 2023.

(2) [Reserved]

(b) * * * (1) A clinician of the inpatient rehabilitation facility must perform a comprehensive, accurate, standardized, and reproducible assessment of each Medicare Part A fee-for-service inpatient using the inpatient rehabilitation facility patient assessment instrument specified in paragraph (b) of this section as part of his or her patient assessment in accordance with the schedule described in § 412.610. IRFs must also complete a patient assessment instrument in accordance with § 412.606 for each Medicare Part C (Medicare Advantage) patient admitted to or discharged from an IRF on or after October 1, 2009. In addition, IRFs must complete a patient assessment instrument in accordance with § 412.606 for all other patients, regardless of payer, admitted to or discharged from an IRF on or after October 1, 2023.

* * * * *

■ 5. Amend § 412.610 by revising paragraphs (a), (b), (c) introductory text, (c)(1)(i)(A), (c)(2)(ii)(B) and (f) to read as follows:

§ 412.610 Assessment schedule.

(a) *General.* For each inpatient, an inpatient rehabilitation facility must complete a patient assessment instrument as specified in § 412.606 that covers a time period that is in accordance with the assessment schedule specified in paragraph (c) of this section.

(b) *Starting the assessment schedule day count.* The first day that the inpatient is furnished services during his or her current inpatient rehabilitation facility hospital stay is

counted as day one of the patient assessment schedule.

(c) *Assessment schedules and references dates.* The inpatient rehabilitation facility must complete a patient assessment instrument upon the patient's admission and discharge as specified in paragraphs (c)(1) and (2) of this section.

(1) * * *

(i) * * *

(A) *General.* Time period is a span of time that covers calendar days 1 through 3 of the patient's current hospitalization.

* * * * *

(2) * * *

(ii) * * *

(B) The patient stops being furnished inpatient rehabilitation services.

* * * * *

(f) *Patient assessment instrument record retention.* An inpatient rehabilitation facility must maintain all patient assessment data sets completed on all Medicare Part A fee-for-service patients within the previous 5 years, on Medicare Part C (Medicare Advantage) patients within the previous 10 years, and all other patients within the previous 5 years either in a paper format in the patient's clinical record or in an electronic computer file format that the inpatient rehabilitation facility can easily obtain and produce upon request to CMS or its contractors.

■ 6. Amend § 412.614 by—

■ a. Revising paragraphs (a) introductory text and (b)(1);

■ b. Revising paragraph (d)(2)

■ c. Adding paragraph (d)(3).

■ d. Revising paragraph (e).

The revisions and additions read as follows:

§ 412.614 Transmission of patient assessment data.

(a) *Data format. General Rule.* The inpatient rehabilitation facility must encode and transmit data for each inpatient—

* * * * *

(b) * * *

(1) Electronically transmit complete, accurate, and encoded data from the patient assessment instrument for each inpatient to our patient data system in accordance with the data format specified in paragraph (a) of this section; and

* * * * *

(d) * * *

(2) *Medicare Part C (Medicare Advantage) data.* Failure of the inpatient rehabilitation facility to transmit all of the required patient assessment instrument data for its Medicare Part C (Medicare Advantage)

patients to our patient data system in accordance with the transmission timeline in paragraph (c) of this section will result in a forfeiture of the facility's ability to have any of its Medicare Part C (Medicare Advantage) data used in the calculations for determining the facility's compliance with the regulations in § 412.29(b)(1).

(3) *All other payer data.* Failure of the inpatient rehabilitation facility to transmit all of the required patient assessment instrument data for all other patients, regardless of payer, to our patient data system in accordance with the transmission timeline in paragraph (c) of this section will result in a forfeiture of the facility's ability to have any of its other payer data used in the calculations for determining the facility's compliance with the regulations in § 412.29(b)(1).

(e) *Exemption to the consequences for transmitting the IRF-PAI data late for Medicare Part C (Medicare Advantage) patients and all other patients, regardless of payer.* CMS may waive the consequences of failure to submit complete and timely IRF-PAI data specified in paragraph (d) of this section when, due to an extraordinary situation that is beyond the control of an inpatient rehabilitation facility, the inpatient rehabilitation facility is unable to transmit the patient assessment data in accordance with paragraph (c) of this section. Only CMS can determine if a situation encountered by an inpatient rehabilitation facility is extraordinary and qualifies as a situation for waiver of the forfeiture specified in paragraphs (d)(2) or (3) of this section. An extraordinary situation may be due to, but is not limited to, fires, floods, earthquakes, or similar unusual events that inflict extensive damage to an inpatient facility. An extraordinary situation may be one that produces a data transmission problem that is beyond the control of the inpatient rehabilitation facility, as well as other situations determined by CMS to be beyond the control of the inpatient rehabilitation facility. An extraordinary situation must be fully documented by the inpatient rehabilitation facility.

■ 7. Amend § 412.618 by amending the introductory text to read as follows:

§ 412.618 Assessment process for interrupted stays.

For purposes of the patient assessment process, if any patient has an interrupted stay, as defined under § 412.602, the following applies:

* * * * *

■ 8. Amend § 412.624 by revising paragraphs (e)(1) and (4) to read as follows:

§ 412.624 Methodology for calculating the Federal prospective payment rates.

* * * * *

(e) * * *

(1) Adjustment for area wage levels.

The labor portion of a facility's Federal prospective payment is adjusted to account for geographical differences in the area wage levels using an appropriate wage index.

(i) The application of the wage index is made on the basis of the location of the facility in an urban or rural area as defined in § 412.602.

(ii) Starting on October 1, 2022, CMS applies a cap on decreases to the wage index such that the wage index applied to an IRF is not less than 95 percent of the wage index applied to that IRF in the prior FY.

(iii) Adjustments or updates to the wage data used to adjust a facility's Federal prospective payment rate under paragraph (e)(1) of this section will be made in a budget neutral manner. CMS determines a budget neutral wage adjustment factor, based on any adjustment or update to the wage data, to apply to the standard payment conversion factor.

* * * * *

(4) Adjustments for teaching

hospitals.(i) *General.* For discharges on or after October 1, 2005, CMS adjusts the Federal prospective payment on a facility basis by a factor as specified by CMS for facilities that are teaching institutions or units of teaching institutions.

(A) An IRF's teaching adjustment is based on the ratio of the number of full-time equivalent residents training in the IRF divided by the facility's average daily census.

(B) As described in § 412.105(f)(1)(iii)(A), residents with less than full-time status are counted as partial full time equivalent based on the proportion of time assigned to the inpatient rehabilitation facility compared to the total time necessary to fill a residency slot. Residents rotating to more than one hospital or non-hospital setting will be counted in proportion to the time they are assigned to inpatient rehabilitation facility compared to the total time worked in all locations. An inpatient rehabilitation facility cannot claim time spent by the resident at another inpatient rehabilitation facility or hospital.

(C) Except as described in paragraph (e)(4)(i)(D) of this section, the actual number of current year full-time equivalent residents used in calculating the teaching adjustment is limited to the number of full-time equivalent residents in the IRF's final settled cost report for the most recent cost reporting period ending on or before November 15, 2004 (base year).

(D) If the inpatient rehabilitation facility first begins training residents in a new approved graduate medical education program after November 15, 2004, the number of full-time equivalent residents determined under paragraph (e)(4)(i)(C) of this section may be adjusted using the method described in § 413.79(e)(1)(i).

(E) The teaching adjustment is made on a claim basis as an interim payment, and the final payment in full for the claim is made during the final settlement of the cost report.

(ii) *Closure of an IRF or IRF residency training program.* (A) *Closure of an IRF.* For cost reporting periods beginning on or after October 1, 2011, an IRF may receive a temporary adjustment to its FTE cap to reflect displaced residents added because of another IRF's closure if the IRF meets the following criteria:

(1) The IRF is training additional displaced residents from an IRF that closed on or after October 1, 2011.

(2) No later than 60 days after the IRF begins to train the displaced residents, the IRF submits a request to its Medicare contractor for a temporary adjustment by identifying the displaced residents who have come from the closed IRF and have caused the IRF to exceed its cap, and specifies the length of time the adjustment is needed.

(B) *Closure of an IRF's residency training program.* If an IRF that closes its residency training program on or after October 1, 2011, agrees to temporarily reduce its FTE cap according to the criteria specified in paragraph (e)(4)(ii)(A)(2) of this section, another IRF(s) may receive a temporary adjustment to its FTE cap to reflect displaced residents added because of the closure of the residency training program if the criteria specified in paragraph (e)(4)(ii)(A)(1) of this section are met.

(1) *Receiving IRF(s).* For cost reporting periods beginning on or after October 1, 2011, an IRF may receive a temporary adjustment to its FTE cap to reflect

displaced residents added because of the closure of another IRF's residency training program if the IRF is training additional displaced residents from the residency training program of an IRF that closed a program; and if no later than 60 days after the IRF begins to train the displaced residents the IRF submits to its Medicare Contractor a request for a temporary adjustment to its FTE cap, documents that it is eligible for this temporary adjustment by identifying the displaced residents who have come from another IRF's closed program and have caused the IRF to exceed its cap, specifies the length of time the adjustment is needed, and submits to its Medicare Contractor a copy of the FTE reduction statement by the hospital that closed its program, as specified in paragraph (ii)(A)(2) of this section.

(2) *IRF that closed its program.* An IRF that agrees to train displaced residents who have been displaced by the closure of another IRF's program may receive a temporary FTE cap adjustment only if the hospital with the closed program temporarily reduces its FTE cap based on the FTE of displaced residents in each program year training in the program at the time of the programs closure. This yearly reduction in the FTE cap will be determined based on the number of those displaced residents who would have been training in the program during that year had the program not closed. No later than 60 days after the displaced residents who were in the hospital that closed its program(s) begin training at another hospital must submit to its Medicare Contractor a statement signed and dated by its representative that specifies that it agrees to the temporary reduction in its FTE cap to allow the IRF training the displaced residents to obtain a temporary adjustment to its cap; identifies the displaced residents who were in the training at the time of the program's closure; identifies the IRF's to which the displaced residents are transferring once the program closes; and specifies the reduction for the applicable program years.

* * * * *

Dated: March 30, 2022.

Xavier Becerra,

Secretary, Department of Health and Human Services.

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